Simon v. Adzilla, Inc [New Media] et al Doc. 48

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

THE FACEBOOK, INC.,) C-07-01389-JW
)
PLAINTIFF,) JULY 2, 2008
)
V.)
)
CONNECTU, LLC, ET AL.,) PAGES 1-73
)
DEFENDANTS.)
_______________________)

THE PROCEEDINGS WERE HELD BEFORE

THE HONORABLE UNITED STATES DISTRICT

JUDGE JAMES WARE

A P P E A R A N C E S:

FOR THE PLAINTIFF: ORRICK, HERRINGTON & SUTCLIFFE
BY: I. NEEL CHATTERJEE
THERESA A. SUTTON
YVONNE GREER
1000 MARSH ROAD
MENLO PARK, CALIFORNIA 94025

FOR THE DEFENDANTS: BOIES, SCHILLER & FLEXNER
BY: DAVID A. BARRETT
EVAN ANDREW PARKE
D. MICHAEL UNDERHILL
575 LEXINGTON AVENUE
7TH FLOOR
NEW YORK, NEW YORK 10022

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

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A P P E A R A N C E S: (CONT'D)

FOR THE DEFENDANTS: FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
BY: SCOTT R. MOSKO
STANFORD RESEARCH PARK
3300 HILLVIEW AVENUE
PALO ALTO, CALIFORNIA 94304

ALSO PRESENT: HOLME, ROBERTS & OWEN
BY: ROGER MYERS
KATHERINE KEATING
560 MISSION STREET
25TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105

QUINN, EMANUEL, URQUHART, OLIVER & HEDGES
BY: BRUCE VAN DALSEM
RANDY GARTEISER
865 S. FIGUEROA STREET
10TH FLOOR
LOS ANGELES, CALIFORNIA 90017

HELLER EHRMAN
BY: ROBERT HAWK
MELYSSA E. MINAMOTO
275 MIDDLEFIELD ROAD
MENLO PARK, CALIFORNIA 94025

CNET NEWS
BY: GREG SANDOVAL
235 SECOND STREET
SAN FRANCISCO, CALIFORNIA 94105

SAN JOSE, CALIFORNIA JULY 2ND, 2008

P R O C E E D I N G S

(WHEREUPON, COURT CONVENED AND THE FOLLOWING PROCEEDINGS WERE HELD:)

THE COURT: CALL THE NEXT MATTER.

THE CLERK: CALLING CASE NUMBER 07-1389, THE FACEBOOK, INC., VERSUS CONNECTU, ET AL.

CALLING NONPARTY CNET'S MOTION TO UNSEAL FILINGS AND TRANSCRIPT.

FIFTEEN MINUTES EACH SIDE.

COUNSEL, COME FORWARD AND STATE YOUR APPEARANCES.

MS. SUTTON: GOOD MORNING, YOUR HONOR. THERESA SUTTON FOR ORRICK, HERRINGTON & SUTTON FOR COUNSEL TO THE PLAINTIFFS THE FACEBOOK AND MARK ZUCKERBERG.

MR. MYERS: GOOD MORNING. ROGER MYERS ON BEHALF OF HOLME, ROBERTS & OWEN ON BEHALF OF CNET.

THE COURT: MR. MYERS, IS THERE ANYTHING MORE YOU WOULD WISH TO SAY TO THE COURT WITH RESPECT TO THE MOTION TO INTERVENE FOR A LIMITED PURPOSE AND THE MOTION TO UNSEAL DOCUMENTS?

MR. MYERS: ONLY A COUPLE OF THINGS, YOUR HONOR. FIRST I WANT TO THANK THE COURT FOR SETTING

THIS ON AN EXPEDITED BASIS SO WE CAN HAVE IT HEARD TODAY WITH THE OTHER MOTION.

I THINK THE PARTIES HAVE AGREED IN THEIR BRIEFS ON SEVERAL THINGS: ONE, THAT THE MOTION TO INTERVENE SHOULD BE GRANTED; AND, TWO, THAT THE TRANSCRIPT OF THE HEARING ON JUNE 23RD, AND THE MOTION THAT WAS AT ISSUE IN THAT HEARING AND ALL OF THE PAPERS RELATED TO THAT MOTION SHOULD BE UNSEALED, ALTHOUGH THE PARTIES DISAGREE ON WHETHER EITHER THE TRANSCRIPT OR ANY OF THE PAPERS SHOULD BE REDACTED.

THE PARTIES ALSO AGREE THAT THE REMAINDER OF THE RECORDS COULD BE REFERRED TO A MAGISTRATE JUDGE AND ALTHOUGH WE DISAGREE ON THE PROCEDURES AND THE REQUIREMENT THAT WOULD BE SHOWN THERE.

ON THE TRANSCRIPT AND BOTH -- AND ACTUALLY THE MOTION AS WELL, I DON'T THINK THERE'S ANY REASONABLE DISPUTE THAT THE MOTION WAS A DISPOSITIVE MOTION AND THAT IT, IF GRANTED, AND IT HAS BEEN GRANTED, WILL TERMINATE THE CASE.

AS A RESULT, ALL OF THE MOVING PAPERS AND THE PAPERS RELATED TO THAT MOTION HAVE TO MEET THE COMPELLING NEEDS TEST.

THAT REQUIRES THAT THEY DO MORE THAN COME IN AND SAY THERE IS CONFIDENTIAL INFORMATION HERE.

THE CASE THAT THEY PRIMARILY RELY ON, WHICH IS THE ENCYCLOPEDIA BROWN CASE, SPECIFICALLY TALKS ABOUT THAT ISSUE AND SAYS THAT WITH RESPECT TO CONFIDENTIAL INFORMATION, FIRST IT SAYS BASICALLY IT HAS TO BE AKIN TO A TRADE SECRET BUT THEN IT HAS TO BE PROOF OF COMPETITIVE HARM, AND WITH RESPECT TO COMPETITIVE HARM VAGUE AND CONCLUSORY ALLEGATIONS WILL NOT SUFFICE.

MOVANT MUST PROVE THAT DISCLOSURE WOULD WORK, A CLEARLY DECLINED AND VERY SERIOUS INJURY.

AND IN THAT CASE TESTIMONY WAS ACTUALLY PRESENTED TO SHOW THAT THE INFORMATION WOULD WORK IN COMPETITIVE HARM.

IN THIS SITUATION ALL WE GOT IN RESPONSE TO OUR MOTION WAS AN OPPOSITION BRIEF WITHOUT ANY DECLARATIONS OR TESTIMONY OR ANY EXPLANATION ABOUT HOW KEEPING ANY PART OF THE PAPERS THAT WERE FILED WITH RESPECT TO THE MOTION TO ENFORCE THE SETTLEMENT WOULD ACTUALLY WORK A COMPETITIVE HARM.

NO, NO PROOF, NO SHOWING, JUST THE ASSERTIONS, THE CONCLUSORY ALLEGATIONS WHICH THE NINTH CIRCUIT, JUDGE PATEL IN THE MCCOY CASE, VIRTUALLY EVERY COURT THAT HAS LOOKED AT THIS HAS SAID THAT IS NOT ENOUGH.

WITH RESPECT TO THE TRANSCRIPT, THAT HAS

TO MEET UNDER PHOENIX NEWSPAPERS THE NINTH CIRCUIT SAID WHEN YOU HAVE A TRANSCRIPT OF A HEARING TO WHICH THE PUBLIC HAS THE RIGHT OF ACCESS, THE FIRST AMENDMENT TEST HAS TO BE APPLIED WHEN YOU'RE TALKING ABOUT RELEASING THE TRANSCRIPT.

WE THINK, AND I'M HAPPY TO ANSWER ANY QUESTIONS ON THIS, WE THINK IT'S PRETTY CLEAR THAT THE FIRST AMENDMENT RIGHT OF ACCESS ATTACHES TO A MOTION TO ENFORCE OR TO APPROVE A SETTLEMENT.

I MEAN, JUDGE PATEL SAID SO IN THE MCCOY CASE. YOU HAVE THE BANK OF AMERICA CASE OUT OF THE THIRD CIRCUIT IN WHICH THE COURT SAID THAT A MOTION TO ENFORCE A SETTLEMENT IS PUBLIC.

YOU HAVE THE JESSUP CASE FROM JUDGE POSNER IN THE SEVENTH CIRCUIT IN WHICH THE COURT SAID THAT A MOTION SEEKING JUDICIAL APPROVAL OF A SETTLEMENT IS PUBLIC.

YOU EVEN HAVE THE GLENN FALLS CASE IN THE SECOND CIRCUIT THAT THE PLAINTIFFS HAVE CITED IN WHICH THE SECOND CIRCUIT DISTINGUISHED DISCUSSIONS ABOUT A DRAFT TO SETTLEMENT WHICH COULD BE HELD IN CHAMBERS WITH A MOTION TO ENFORCE OR REJECT THE SETTLEMENT WHICH THE SECOND CIRCUIT HAS SAID HAD TO BE HELD IN OPEN COURT.

SO WE THINK IT'S CLEAR THERE WAS A FIRST

AMENDMENT RIGHT OF ACCESS ON THE 23D AND THAT MEANS THEY HAVE TO MEET THE COMPELLING INTEREST TEST AND IF THEY HAVEN'T MET THE COMPELLING NEEDS TEST, THEY CERTAINLY HAVEN'T MET THE COMPELLING INTEREST TEST.

I DON'T KNOW IF YOU WANT TO HEAR ANYTHING WITH RESPECT TO THE REFERRAL TO THE MAGISTRATE JUDGE. I THINK IT'S PRETTY CLEAR THAT THEY HAVE THE BURDEN AND THEY HAVE TO CARRY THEIR BURDEN AND SO WE'RE FINE WITH REFERRING IT TO A MAGISTRATE JUDGE TO REVIEW.

WE WOULD LIKE TO BE QUICK BECAUSE OF THE TIMELINESS FACTOR AND THE NEWSWORTHINESS FACTOR. AND WE WOULD ALSO LIKE THE COURT TO BE CLEAR IN ITS REFERRAL ORDER THAT THEY HAVE TO CARRY THEIR BURDEN.

THERE WAS AN ORDER IN THE SUN VERSUS MICROSOFT CASE THAT JUDGE WHYTE HAD IN THIS COURTROOM. AND A SIMILAR THING HAPPENED WHERE A LOT OF DOCUMENTS WERE UNSEALED AND THE MEDIA INTERVENED AND JUDGE WHYTE IN THAT CASE ACTUALLY REFERRED IT TO A SPECIAL MASTER AND HE APPOINTED FORMER JUDGE RENFREW AS A SPECIAL MASTER PAID FOR BY SUN AND MICROSOFT.

AND I THINK USING A MAGISTRATE JUDGE IS PROBABLY MORE EFFICIENT FOR THE PARTIES, AND WE'RE

FINE WITH THAT, BUT IN THAT CASE THERE WAS AN ORDER MODIFYING THE STIPULATED PROTECTIVE ORDER REQUIRING THAT THE PARTIES COME IN AND MAKE A SHOWING TO JUSTIFY THE SEALING, THE CONTINUED SEALING OF ANY DOCUMENTS OR THE REDACTIONS AND AS A RESULT MOST OF THE DOCUMENTS WERE UNSEALED ONLY WITH LIMITED REDACTIONS AND WE WOULD ASK THAT A SIMILAR PROCEDURE BE EMPLOYED IN THIS CASE.

THE COURT: VERY WELL. MS. SUTTON.

MS. SUTTON: THANK YOU, YOUR HONOR. IF I COULD WORK BACKWARDS REAL QUICKLY, IN TERMS OF THE REFERRAL TO THE MAGISTRATE JUDGE, MR. MYERS SUGGESTED THAT IT HAPPEN QUICKLY. I'M NOT SURE WHAT THAT MEANS. THE RECORD IS VOLUMINOUS, AND WE WOULD REQUEST A REASONABLE AMOUNT OF TIME TO GO THROUGH AND ANALYZE THE DOCUMENTS THAT HAVE PREVIOUSLY BEEN UNDER SEAL.

THIS CASE HAS BEEN GOING ON THREE AND A HALF YEARS. SO IT'S GOING TO TAKE SOME TIME TO PARSE THROUGH THE RECORD AND THEN PREPARE ANY DECLARATIONS THAT THE COURT MIGHT DEEM NECESSARY TO MEET A DIFFERENT BURDEN.

THE RECORDS THAT WERE FILED IN THE SUPERIOR COURT, MR. MYERS DOESN'T DISCUSS WHETHER OR NOT HE WANTS TO GO BACK TO THE BEGINNING OF THE

CASE OR JUST TO WHEN THE CASE WAS REMOVED BUT IN THE SUPERIOR COURT IN 2001 THE JUDICIAL COUNSEL INSTITUTED NEW PROCEDURES IN WHICH THE PARTIES WERE COMPELLED -- WERE REQUIRED TO MEET A COMPELLING INTEREST STANDARD IN GETTING ANYTHING SEALED.

SO TO THE EXTENT THAT DOCUMENTS WERE SEALED IN SUPERIOR COURT, THOSE DOCUMENTS AND MOTIONS HAVE ALREADY BEEN PREPARED.

I MEAN, WE CAN SUBMIT THOSE TO THE COURT.

IN TERMS OF AFTER REMOVAL, IF THERE'S ANYTHING THAT THE COURT DEEMS IS INSUFFICIENT, PLAINTIFFS ARE CERTAINLY HAPPY TO GO BACK AND PREPARE DECLARATIONS WITH MORE DETAIL IF THE COURT SO DESIRES JUST TO JUSTIFY THE CONCEALING OF THE DOCUMENTS.

TO BE CLEAR, THIS IS AN IP CASE LARGELY, SO WE'RE TALKING ABOUT DOCUMENTS THAT REVEAL SOURCE CODE, BOTH PLAINTIFFS AND DEFENDANTS, TRADE SECRET SOURCE CODE AND OTHER CONFIDENTIAL PROPRIETARY INFORMATION.

PART OF THIS CASE IS ABOUT CONNECTU AND ITS RELATED PARTIES HACKING INTO FACEBOOK SERVERS AND STEALING DATA AND THEN SPAMMING USERS.

SO SOME OF THE DOCUMENTS THAT ARE ATTACHED OR INCLUDED IN THE RECORD ARE DOCUMENTS

THAT SHOW WHAT SECURITY MEASURES FACEBOOK TOOK TO PREVENT FURTHER ACTIONS THAT THE DEFENDANTS TOOK.

SO, SO -- WE CAN SHOW COMPELLING REASONS TO KEEP THIS INFORMATION SEALED.

SOME OF THE OTHER INFORMATION INCLUDES FINANCIAL INFORMATION OF A PRIVATE COMPANY. FACEBOOK IS PRIVATELY HELD. IT IS NOT HELD TO THE SAME STANDARD OF A PUBLIC COMPANY WHERE IT'S REQUIRED TO MAKE PUBLIC DISCLOSURES FOR SECURITIES REASONS OR OTHER FINANCIAL INFORMATION.

THE INFORMATION HAS BEEN KEPT PRIVATE BY FACEBOOK AND FACEBOOK WOULD JUST LIKE TO CONTINUE TO KEEP THAT PRIVATE FOR A VARIETY OF REASONS, NOT THE LEAST OF WHICH IS COMPETITIVE HARM THAT IT MIGHT FACE. AND SO WE WOULD BE PREPARED TO FILE DECLARATIONS IN SUPPORT OF THAT AS WELL.

THERE'S ALSO PRIVATE COMMUNICATIONS AMONG SOME OF THE PRINCIPALS AT FACEBOOK AND THEIR FORENSIC COLLEGIANS AND OTHER FAMILY MEMBERS AND THOSE HAVE A CONSTITUTIONAL RIGHT OF PRIVACY THAT WE WOULD LIKE TO PROTECT AND AGAIN WE COULD SUBMIT A DECLARATION DETAILING THAT AS WELL.

IN TERMS OF THE TRANSCRIPT, WHILE THE RIGHT MAY HAVE A GENERAL RIGHT TO ACCESS TO PUBLIC PROCEEDINGS, IT IS NOT ABSOLUTE. IT IS A QUALIFIED

RIGHT.

AND IN ORDER TO HAVE WHOLESALE UNSEALING OF THE RECORD, THEY NEED TO SHOW THAT THAT -- THAT THE SEALING DID NOT, DID NOT SERVE A COMPELLING INTEREST AND THAT THERE WAS NO ALTERNATIVE MEANS.

AND THE PROPOSED TRANSCRIPT THAT THE COURT HAS OFFERED IS NARROWLY TAILORED TO PROTECT FACEBOOK'S AND DEFENDANT'S, QUITE FRANKLY, PRIVATE INFORMATION FROM THE SETTLEMENT AGREEMENT AND THE SETTLEMENT DISCUSSIONS.

IT'S, IT'S VERY NARROWLY TAILORED SO AS NOT TO UNNECESSARILY IMPEDE ON FREE ACCESS TO WHAT HAD HAPPENED AT THE HEARING. SO TO ARGUE THAT NO MORE OF IT NEEDS TO BE RELEASED THEN THE COURT HAS PROPOSED.

THE MOTION IN THE RELATED PAPERS WE READILY ADMITTED IN OUR OPPOSITION THAT WE WOULD BE HAPPY TO GO BACK AND UNSEAL MANY OF THE DOCUMENTS.

AT THE OUTSET, WHEN THE MOTION TO ENFORCE WAS FILED, THE PARTIES HAD AT THAT TIME AGREED TO KEEP EVERYTHING CONFIDENTIAL. THIS CASE HAS GOTTEN WIDE MEDIA ATTENTION AND IN ORDER TO FACILITATE A WRAP-UP OF EVERYTHING AND GET THE DISMISSAL ON FILE, THE PARTIES HAD AGREED TO KEEP EVERYTHING CONFIDENTIAL SO EVERYTHING GOT PUT UNDER SEAL.

AND THERE'S OBVIOUSLY LOTS OF EXHIBITS AND THINGS THAT CAN BE UNSEALED AT THIS POINT NOW THAT THE SETTLEMENT IS OUT AND THE AGREEMENT HAS LARGELY BEEN RELEASED TO THE PUBLIC AS WELL.

BUT THERE ARE STILL DOCUMENTS THAT ARE APART OF THAT RECORD THAT NEED TO REMAIN SEALED, AGAIN IT'S PRIVATE INFORMATION BELONGING TO FACEBOOK THEY WOULD HAVE NEVER RELEASED TO THE PUBLIC BUT FOR THEIR NEED TO DEFEND THEMSELVES IN THIS MOTION TO ENFORCE AND THEY RELIED ON THE PROTECTIVE ORDER IN RELEASING SOME OF THE INFORMATION.

AND WHAT I'M THINKING OF IN PARTICULARLY IS THE PRIVATE VALUATION OF THE COMPANY AS WELL AS AN INTERNAL COMMON STOCK AGREEMENT THAT FACEBOOK USES WITH ITS EMPLOYEES.

THOSE ARE NOT DOCUMENTS THAT WOULD HAVE BEEN RELEASED INTO THE PUBLIC BUT FOR THE MOTION TO ENFORCE AND A RELIANCE ON A PROTECTIVE ORDER.

THERE ALSO ARE SOME DECLARATIONS THAT CONNECTU PUT INTO THE RECORD THAT DISCLOSED THINGS THAT HAPPENED AT THE MEDIATION OR PURPORTEDLY OCCURRED AT THE MEDIATION AND THOSE HAVE THEIR OWN PROTECTIONS UNDER A.D.R. LOCAL RULE 6-11.

THE PARTIES ARE NOT PERMITTED TO

DISCLOSE, TO DISCLOSE WHAT HAPPENED OR WHAT WAS SAID AT THE MEDIATION AND CONNECTU IMPROPERLY PUT THOSE INTO THE RECORD. AND SO TO UNSEAL THEM WOULD NOT ONLY VIOLATE THE MEDIATION PRIVILEGE, IT GOES AGAINST THE PARTY'S AGREEMENT TO KEEP THINGS CONFIDENTIAL BUT ALSO VIOLATES A.D.R. LOCAL RULE 6-11 AND SO WE WOULD ASK THAT THOSE REMAIN SEALED.

AND AGAIN, WE ARE HAPPY TO GO BACK AND PREPARE DECLARATIONS DESCRIBING THE INFORMATION WHY THIS INFORMATION SHOULD BE SEALED.

THE COURT: VERY WELL. ANYONE ELSE WANT TO SPEAK TO THIS MATTER?

MR. MYERS: YOUR HONOR, COULD I BRIEFLY? I'M SORRY, GO AHEAD.

MR. BARRETT: YOUR HONOR, DAVID BARRETT FROM BOIES, SCHILLER & FLEXNER REPRESENTING CONNECTU AND I WILL SPEAK BRIEFLY AND IN RESPONSE TO A COUPLE OF THINGS THAT MS. SUTTON SAID.

CONNECTU IS NOT REQUESTING THAT THE COURT REDACT ANY MORE THAN WE UNDERSTAND THE COURT IS PREPARED TO DO.

CONNECTU IS TAKING NO POSITION ON WHETHER THE REDACTIONS THAT THE COURT WE UNDERSTAND MAY BE MAKING ARE APPROPRIATE BECAUSE WE UNDERSTAND THAT THAT DETERMINATION INVOLVES BALANCING BY THE COURT

OF CONFIDENTIALITY RIGHTS AND PUBLIC INTERESTS.

WE DID NOTE THAT, THAT SOME OF THE REDACTIONS IN THE TRANSCRIPT SEEM TO GO BEYOND THE REDACTIONS THAT THE COURT HAD MADE IN THE TERM SHEET AND INDEED I THINK GO SOMEWHAT BEYOND WHAT MS. SUTTON WAS SUGGESTING FACEBOOK WAS SEEKING IN TERMS OF REDACTION.

AS THE COURT WILL RECALL, WHEN YOU REDACTED THE TERM SHEET IN YOUR ORDER LAST WEEK, ESSENTIALLY THE ONLY THINGS THAT WERE REDACTED WERE NUMBERS.

AND AS WE UNDERSTAND THE PROPOSED REDACTIONS IN THE TRANSCRIPT, THEY GO BEYOND NUMBERS AND COVER, I BELIEVE IT'S FAIR TO SAY, SOME SUBSTANTIVE ARGUMENTS.

MS. SUTTON REFERRED TO THE PRIVATE VALUATION OF THE COMPANY. THAT'S OBVIOUSLY A NUMBER. I'M NOT SURE WHAT SHE MEANT BY INTERNAL COMMON STOCK AGREEMENT.

OBVIOUSLY THE TERM SHEET, WHICH IS ALREADY PUBLIC, DOES IDENTIFY SOME RESTRICTIONS THAT WILL GO WITH THE STOCK IF THE SETTLEMENT AGREEMENT IS ULTIMATELY ENFORCED.

AND THE THIRD THING SHE MENTIONED IS DISCLOSURE OF EVENTS RELATING TO THE MEDIATION, AND

I DID JUST WANT TO SAY A WORD ABOUT THAT BECAUSE SHE SAID THAT CONNECTU IMPROPERLY PUT THOSE MATTERS RELATING TO THE MEDIATION INTO THE RECORD.

AND I DO DISAGREE WITH THAT FOR TWO REASONS.

FIRST OF ALL, AS WE ARGUED, ALTHOUGH I UNDERSTAND THE COURT WAS NOT PERSUADED IN ITS OPINION, AS WE ARGUED, THERE IS AN EXCEPTION TO THE MEDIATION PRIVILEGE THAT IS EXPRESSED IN THE LOCAL A.D.R. RULE.

WE ALSO ARGUED THAT IT CAN BE OVERCOME OR IS OVERCOME BY THE SECURITIES ACT OF 1934 BY PROVISIONS OF THAT ACT BARRING SECURITIES FRAUD. SO WE THINK IT WAS NOT IMPROPER FOR THAT REASON.

AND SECONDLY, SECONDLY, IN PARTICULAR, IN THIS CASE, AS WE ARGUED, AND THE REASON THAT WE PUT IN THE SECOND DECLARATION FROM MR. WINKLEVOSS, WHICH DID DISCUSS MATTERS IN THE MEDIATION, WAS BECAUSE IN FACEBOOK'S REPLY BRIEF IN SUPPORT OF THE MOTION TO ENFORCE, THEY MADE THE STATEMENT THAT, THAT CONNECTU HAD NOT MADE ANY PROFFER OF WHAT HAPPENS IN THE MEDIATION AND THAT WE WOULD LIKE TO SHOW THE COURT IN ORDER TO FURTHER SUPPORT OUR CLAIM OF SECURITIES FRAUD.

AND, YOUR HONOR, I WOULD SUBMIT THAT WHEN

FACEBOOK MADE THAT STATEMENT IN EFFECT SAYING ONE OF THE REASONS THAT YOU SHOULD REJECT OUR DEFENSE WAS BECAUSE WE HADN'T TOLD YOU ANYTHING THAT HAPPENED IN THE MEDIATION THAT WOULD SUPPORT A SECURITIES FRAUD CLAIM, THAT WAS A -- IN FACT, THEY SAID, THEY SAID, YOUR HONOR, WE HAVE NO EVIDENCE OF ANYTHING THAT HAPPENED IN THE MEDIATION THAT WOULD SUPPORT A SECURITIES FRAUD CLAIM.

WHEN THEY MADE THAT ARGUMENT, THAT WAS EFFECTIVELY A WAIVER AND WE WERE ENTITLED TO DEFEND AGAINST THAT ARGUMENT BY PUTTING IN THAT EVIDENCE.

THAT'S, PERHAPS, A BIT OF A LONG WINDED WAY OF SAYING THAT I DON'T THINK THAT THERE WAS ANYTHING IMPROPER ABOUT THAT DECLARATION BEING PUT IN, IN LIGHT OF THE -- IN LIGHT OF THOSE FACTORS.

NOW, THAT MAY BE A DIFFERENT QUESTION FROM WHETHER THE COURT BELIEVES AT THIS STAGE OF THE PROCEEDINGS AND IN LIGHT OF CNET'S MOTION, WHETHER IT IS APPROPRIATE TO DISCLOSE INFORMATION ABOUT WHAT OCCURRED IN THE MEDIATION AND I RECOGNIZE THAT THAT'S A DIFFERENT ISSUE.

BUT EVEN HAVING SAID THAT, IT DID APPEAR THAT SOME OF THE REDACTIONS IN THE TRANSCRIPT WERE -- DID NOT INVOLVE MATTERS THAT HAD ANYTHING TO DO WITH THE MEDIATION. THEY INVOLVED

SUBSTANTIVE MATTERS THAT CAN BE DISCUSSED WITHOUT ANY DISCLOSURE OF WHAT HAPPENED IN THE MEDIATION.

THANK YOU, YOUR HONOR.

THE COURT: BRIEFLY.

MR. MYERS: YES, YOUR HONOR. IT'S NOT OUR BURDEN; IT'S THEIR BURDEN. AND I'M ONLY NOW TALKING ABOUT THE TRANSCRIPT AND THE MOTION AND I'M NOT TALKING ABOUT ALL THE OTHER RECORDS -- WE CAN TALK ABOUT -- NOBODY WANTS THEIR SOURCE CODE.

WHEN THIS GETS REFERRED TO THE MAGISTRATE AND THEY SUBMIT A DECLARATION SAYING DOCUMENT XX CONTAINS OUR SOURCE CODE AND WE WANT IT REDACTED, AND THAT'S FINE. THAT HAPPENED IN THE SUN MICROSOFT CASE. THAT'S A TRADE SECRET, AND NO ONE HAS A PROBLEM WITH THAT.

IT GETS A LITTLE SQUISHY WHEN YOU TALK ABOUT CONFIDENTIAL INFORMATION BECAUSE I IMAGINE FROM THE COURT'S OWN EXPERIENCE IT KNOWS THAT THE PARTIES TEND TO BE OVERZEALOUS IN DEFINING WHAT THEY BELIEVE TO BE THEIR CONFIDENTIAL INFORMATION.

AND THAT IS WHY THE COURTS REQUIRE A SHOWING, THE COMPELLING INTEREST TEST, FOR THE TRANSCRIPT AND THE COMPELLING NEEDS TEST, WHICH REQUIRES A SHOWING OF -- NOT JUST THAT IT'S CONFIDENTIAL BUT COMPETITIVE HARM AND THEY CAN'T

JUST COME IN AND SAY, WELL, WE'LL DO IT. THEY HAD A CHANCE TO DO IT AND IN WHAT THEY FILED ON MONDAY. THEY HAD THE WEEKEND. THEY COULD HAVE PUT THE DECLARATION IN. THEY DIDN'T.

THEY COULD HAVE PUT ONE IN BEFORE THE HEARING WAS CLOSED, AND THEY DIDN'T DO THAT EITHER. THERE'S BEEN NO SHOWING THAT WOULD JUSTIFY ANY REDACTION OF THE HEARING OR ANY REDACTION OF THE PAPERS REGARDING THE MOTION TO ENFORCE.

AND EVERYTHING ELSE WE AGREE CAN BE REFERRED TO THE MAGISTRATE AND THEY CAN MAKE A SHOWING ON THOSE DOCUMENTS.

WITH RESPECT TO TIMING, WE PROPOSE TWO WEEKS. WE'RE FINE WITH BIFURCATING THAT AND NOT DEALING WITH ANY OF THE DOCUMENTS THAT WERE IN THE SUPERIOR COURT BEFORE IT WAS REMOVED.

NOW WE CAN MAYBE DO THAT LATER, ANOTHER TWO WEEKS DOWN THE ROAD, BUT WE PROPOSE TWO WEEKS.

AND THE A.P. CASE THAT WE CITED, THE NINTH CIRCUIT CASE WE CITED IT GAVE THE PARTIES THREE DAYS BECAUSE THE COURT HAD SEALED EVERYTHING.

IT SAID YOU SHOULDN'T BE DOING THIS AND YOU HAVE TO GO BACK AND LOOK AT THIS. WE'RE GOING TO FILE MOTIONS TO JUSTIFY THE SEALING BUT YOU HAVE THREE DAYS. SO WE'RE PROPOSING TWO WEEKS.

THEY, I THINK, HAVE NOT PROPOSED ANY TIMEFRAME SO WE'RE OPEN TO TALKING ABOUT IT, BUT WE WOULD PROPOSE TWO WEEKS.

THE COURT: WELL, I -- UNLESS YOU HAVE SOMETHING THAT IS BURNING, I THINK I HAVE A, A -- WELL, I SHOULDN'T SAY SOLUTION. I HAVE AN ORDER THAT I CAN MAKE THAT IN MY MIND DOES A PROPERLY, A PROPERLY BALANCE AND MR. BARRETT'S COMMENT THAT BALANCING IS THE WATCH WORD OF THIS WHOLE PROCESS AND I'LL ISSUE THAT AS SOON AS I LEAVE THE BENCH.

IN THAT ORDER I DO RECOGNIZE THE NEED FOR BALANCING BECAUSE THERE ARE COMPETING INTERESTS HERE.

AND I THINK AS THE PARTIES HAVE ADEQUATELY POINTED OUT, THERE ARE DIFFERENT CONCERNS THAT ATTACH TO A CONFIDENTIALITY THAT IS INHERENT IN TRADE SECRETS AND THE TRADITIONAL KINDS OF MATERIAL THAT CAN BE HELD IN CONFIDENCE, EVEN IN THE CONTEXT OF A LITIGATION IN A PUBLIC FORUM SUCH AS THIS COURT.

THE REASON THIS CASE IS ONE THAT I HAVE GIVEN A GREAT DEAL OF ATTENTION TO IS BECAUSE AS A COURT WE ENCOURAGE PARTIES TO ENGAGE IN MEDIATION AND RESOLUTION OF DISPUTES.

THE PUBLIC HAS A DIRECT BENEFIT IN THAT

PROCESS. AND SO COURT ANNEXED MEDIATION IS A VERY IMPORTANT PART OF HOW WE DO BUSINESS AS A COURT AND MY PREDECESSOR -- I ACTUALLY TOOK THE SEAT OF ROBERT PECKHAM. I'M HONORED TO HAVE DONE SO. HE PIONEERED COURT ANNEXED MEDIATION AND IN THE INTEREST OF THIS COURT IN THE ALTERNATIVE DISPUTE RESOLUTION.

SO WHEN THE PARTIES GO OUT TO A.D.R. AND COME TO WHAT THEY REGARD AS A CONFIDENTIAL SETTLEMENT AND COME BACK TO THE COURT WITH A MOTION TO ENFORCE THAT CONFIDENTIAL SETTLEMENT, IT'S PART OF WHAT WE DO AS A COURT IS TO RESPECT THAT CONFIDENTIALITY.

AND I HAVE BEEN MOTIVATED BY A REQUEST BY THE PARTIES TO RESPECT THE CONFIDENTIALITY OF THE SETTLEMENT.

AT THE SAME TIME IT'S NECESSARY TO INVADE SOME OF THE DETAILS OF THAT SETTLEMENT IN ORDER TO DO WHAT THE PARTIES HAVE ASKED THE COURT TO DO AND THAT IS TO ENFORCE THE SETTLEMENT.

IT IS TRUE THAT THERE HAS BEEN A DISPOSITIVE MOTION MADE TO THE COURT IN THE FORM OF THIS MOTION TO ENFORCE THE SETTLEMENT, BUT THE CASE HAS NOT BEEN DISPOSED OF BY THE MOTION BECAUSE AS I LOOK AROUND THE ROOM I DON'T HAVE AGREEMENT FROM

EVERYONE THAT WHAT I'M DOING IS THE CORRECT THING. SO THE WHOLE LITIGATION MAY RESUME AND IF I TAKE ACTION IN THE COURSE OF THIS, WHICH OPENS UP TO PUBLIC SCRUTINY MATTERS THAT THE PARTIES HAVE SOUGHT TO SHIELD IN THE COURSE OF THEIR LITIGATION, I, PERHAPS, WILL PUT THEM IN A DISADVANTAGE IF THE LITIGATION WERE TO CONTINUE.

ONE OF THE THINGS THEY SOUGHT TO PROTECT IN THEIR CONFIDENTIAL SETTLEMENT, I PRESUME, IS ANY PUBLIC DISCOURSE ABOUT THEIR MOTIVATION TO SETTLE AND ANY CHARACTERIZATION OF ONE OR THE OTHER.

BUT IN THE COURSE OF THE MOTION TO COMPEL THE MOTION OF NECESSITY, I HAD TO ASK QUESTIONS ABOUT MATTERS THAT THEY OTHERWISE WOULD KEEP CONFIDENTIAL.

AND, AGAIN, I AM MINDFUL OF THAT WITH RESPECT TO A MOTION SUCH AS THE ONE BEING MADE BY THE COURT TO UNSEAL SO THAT THE PUBLIC CAN GET INTO THOSE PRIVILEGED MATTERS THAT THEY OTHERWISE WOULD KEEP CONFIDENTIAL AND THE PARTIES COULD HAVE CHOSEN TO ENFORCE THEIR SETTLEMENT BY GOING TO FURTHER PRIVATE MEDIATION AND KEPT IT OUT OF THE PUBLIC FORUM ALL TOGETHER.

BUT HAVING CHOSEN THE COURT, THEY HAVE ACTUALLY CHOSEN A PUBLIC FORUM, BUT AT THE SAME

TIME I THINK WE CAN RECONCILE THE INTEREST OF THE PUBLIC THROUGH THE MEDIA OR OTHERWISE TO HAVE ACCESS TO INFORMATION THAT DOESN'T VIOLATE THE KIND OF PRIVILEGE THAT THE PARTIES THOUGHT THEY WERE ENJOYING BY COMING TO A CONFIDENTIAL SETTLEMENT.

AND SO I WILL PARSE BETWEEN THE VARIOUS MATTERS HERE. THE TRANSCRIPT I HAVE GONE THROUGH AND REDACTED PORTIONS OF IT WHICH SPEAK TO THE FINANCIAL DISCLOSURES THAT THEY MADE TO EACH OTHER ON A CONFIDENTIAL BASIS.

BUT TO MR. BARRETT'S POINT THAT MY REDACTIONS ARE MORE EXTENSIVE THAN THAT, WHAT I HAVE TRIED TO DO WAS TO PROTECT THE CONFIDENTIALITY OF THE GIVE AND TAKE IN THE SETTLEMENT DISCUSSIONS AND SO I -- MY REDACTIONS WERE REFLECTIVE OF AN ATTITUDE THAT UNTIL THE PARTIES THEMSELVES VOLUNTARILY DECIDE THAT THOSE MATTERS SHOULD BE PUT IN THE PUBLIC RECORD, I HAVE BEEN MORE -- I HAVE BEEN CAUTIOUS ABOUT PUTTING THOSE MATTERS INTO THE PUBLIC.

THAT TRANSCRIPT WAS ONE WHERE I INVITED THE PARTIES TO COME TO COURT AND SPEAK TO ME CANDIDLY IN A CLOSED FORUM ABOUT WHAT HAD HAPPENED. AND I GUESS NOW I HAVE TO ASSURE THEM THAT I WOULD RESPECT THE CONFIDENTIALITY THAT I TOLD THEM THAT I

WOULD GIVE THEM IN HAVING THAT HEARING AND IT PUTS THE COURT IN A DIFFICULT POSITION TO BE NOW MAKING A JUDGMENT THAT, WELL, I TOLD YOU IT WAS CONFIDENTIAL AND SEALED BUT NOW I'M GOING TO MAKE IT PUBLIC.

THE INTEGRITY OF THE COURT CAN BECOME INVOLVED IF PARTIES WHO GO BEFORE THE COURTS ARE ASSURED THAT IT'S A SEALED CONFIDENTIAL PROCESS ONLY TO LATER FIND THAT IT IS NOT.

NOW, THE LAW ALLOWS THE COURT TO EXERCISE ITS DISCRETION WITHIN LIMITS.

THERE ARE STANDARDS AND I DO INTEND TO RESPECT THOSE STANDARDS IN WHAT I, WHAT I -- IN THE ORDER THAT I'M GOING TO MAKE WITH RESPECT TO THIS MATTER.

SO YOUR ARGUMENT THAT I SHOULD ACT QUICKLY IS ONE THAT I AM MINDFUL OF.

MR. MYERS, I WILL, AS I SAID, ISSUE MY ORDER AS SOON AS I'M OFF THE BENCH.

I WILL DIRECT THE COURT REPORTER TO FILE A REDACTED TRANSCRIPT SO THAT THAT IS AVAILABLE AND WITH RESPECT TO THE PREMOTION MATTERS THAT WERE FILED UNDER SEAL, AT THE ORDER OF OTHER JUDGES, I GOT THIS CASE ON THE MOTION WITH RESPECT TO THE SETTLEMENT AND THESE ORDERS WERE MADE PRIOR TO MY

INVOLVEMENT IN THE CASE AND I DON'T HAVE A BASIS FOR, AT THIS POINT, MAKING ANY JUDGMENT ABOUT THOSE MATTERS.

THERE ARE STANDARDS THAT AFFECT THAT, AND I DO INTEND TO REFER THOSE MATTERS TO A MAGISTRATE JUDGE TO -- IF THERE ARE FURTHER REQUESTS MADE FOR OPENING TO PUBLIC SCRUTINY THE DOCUMENTS THAT HAVE BEEN PREVIOUSLY SEALED BY THE COURT.

SO WITH THAT THE MOTION TO INTERVENE FOR THE LIMITED PURPOSE OF MAKING THIS MOTION IS GRANTED.

AND THE MOTION TO UNSEAL WILL BE GRANTED TO THE LIMITED EXTENT THAT I HAVE NOW INDICATED.

MR. MYERS: CAN I ASK A POINT OF CLARIFICATION?

THE COURT: CERTAINLY.

MR. MYERS: WITH RESPECT TO THE DOCUMENTS THAT HAVE BEEN FILED, IS THE COURT TREATING THE MOTION --

THE COURT: WHICH DOCUMENTS?

MR. MYERS: WELL, THAT'S MY QUESTION. IS THE COURT TREATING THE MOTION TO ENFORCE THE SETTLEMENT AS PART OF ALL OF THE OTHER RECORDS THAT WILL BE REFERRED TO THE MAGISTRATE OR ARE THOSE GOING TO BE RELEASED WITH THE TRANSCRIPT OR SHORTLY

THEREAFTER?

THE COURT: WELL, GOOD QUESTION. I DON'T KNOW. I WOULD REGARD THE MOTION THAT WAS FILED UNDER SEAL IN A DIFFERENT CATEGORY THAN THE OTHER RECORDS BECAUSE IT WAS FILED PARTICULARLY WITH RESPECT TO A CONFIDENTIAL SETTLEMENT.

AND THAT HAS A PRIVILEGE THAT ATTACHES TO IT THAT IS DIFFERENT THAN THE PRIVILEGES THAT MIGHT APPLY TO OTHER MATTERS.

SO I DO INTEND TO TREAT IT DIFFERENTLY.

I HAVEN'T DECIDED WHETHER OR NOT I WILL GIVE THAT TO THE MAGISTRATE JUDGE OR KEEP IT MYSELF BUT THE TRANSCRIPT WILL -- THE REDACTED TRANSCRIPT WILL BE AVAILABLE.

MR. MYERS: AND THAT WILL GO TO THE PUBLIC COURT FILE? THEY WILL BE ABLE TO GET IT FROM THE FILE?

THE COURT: THE COURT REPORTER HAS A PROCESS THAT SHE USES TO MAKE THAT AVAILABLE TO THE PUBLIC AND I WILL DIRECT HER TO, TO FILE -- IT'S DONE THROUGH SOME ELECTRONIC FORM AND YOU NEED ACCESS TO IT, BUT I'LL DIRECT HER TO FILE A REDACTED TRANSCRIPT.

MR. MYERS: THANK YOU, YOUR HONOR.

THE COURT: THANK YOU ALL.

WE'LL GO NOW TO THE OTHER MOTION THAT IS BEFORE THE COURT HAVING TO DO WITH THE ORDER TO SHOW CAUSE WHY A JUDGMENT SHOULD BE ENTERED OR NOT BE ENTERED AS THE CASE MAY BE.

AND WITH RESPECT TO THAT, I RECEIVED SUBMISSIONS FROM BOTH SIDES. I PRESUME THAT THE SUBMISSION BY THE DEFENDANTS CONNECTU AND OTHERS ARE SUBMITTED WITHOUT WAIVING YOUR OBJECTION TO MY ORDER IN THE FIRST PLACE.

MR. BARRETT: THAT IS CORRECT. THANK YOU. WE ARE, YOUR HONOR, AS YOU SAY, ADDRESSING THE FORM OF THE JUDGMENT AND WE RESERVE OUR RIGHTS TO CONTEST THE ORDER AND THE JUDGMENT AS MAY BE APPROPRIATE.

THE COURT: HERE'S WHAT I INTEND TO DO, AND MAYBE THAT WOULD BE FASTER TO HAVE YOU ADDRESS WHAT I INTEND TO DO AS OPPOSED TO WHAT YOU WOULD WANT ME TO DO.

I HAVE READ YOUR SUBMISSIONS. THEY ARE SUBSTANTIALLY THE SAME. AND SO THE FORM OF THE JUDGMENT I THINK COULD COMPLY WITH YOUR SUBMISSIONS.

THERE ARE A COUPLE OF ASPECTS OF IT THAT I WANT TO ADDRESS.

FIRST, IT WILL BE NECESSARY FOR SOME

INTERMEDIARY TO ACT IN A CAPACITY TO COLLECT INFORMATION AND MOVE THINGS AROUND AND TO DO CERTAIN THINGS TO CARRY OUT THE COURT'S JUDGMENT.

RATHER THAN ACCEPT THE SUBMISSION BY ONE OF THE PARTIES THAT A PARTY SELECT THAT PERSON AND PAY FOR THAT PROCESS, MY INTENT IS TO APPOINT A SPECIAL MASTER WHO WOULD BEHOLDEN TO THE COURT, TAKE DIRECTIONS FROM THE COURT AND NO ONE ELSE, WITH RESPECT TO A COLLECTION OF THE VARIOUS DEPOSITS MANDATED BY THE JUDGMENT AND WITH RESPECT TO ANY DISBURSEMENTS OR FILINGS THAT WOULD COME ALONG WITH THAT AND HAVE THE PARTIES PAY THE COST OF THAT PROCESS EQUALLY.

IT IS ALSO MY INTENT TO THEN HAVE THE JUDGMENT REQUIRE THE MASTER TO COLLECT THE VARIOUS CERTIFICATES OR CASH OR OTHER CONSIDERATION TO COLLECT RATHER THAN DEEM THAT THERE HAS BEEN RELEASES TO ACTUALLY COLLECT A SUBMISSION OF A RELEASE.

I DO INTEND TO PROVIDE THAT THAT RELEASE HAS TO BE SUBMITTED TO THE COURT FOR ITS APPROVAL AND THEN IT WOULD BE DEPOSITED WITH THE MASTER SO THAT WOULD LEAVE TO THE COURT AND NO ONE ELSE THE DETERMINATION AS TO WHETHER OR NOT THE RELEASE IS CONSISTENT WITH THE LANGUAGE OF THE SETTLEMENT

AGREEMENT WHICH PROVIDES AS BROAD AS POSSIBLE. I CAN'T RECALL THE EXACT WORDS.

I WOULD ALSO HAVE THE PARTIES SUBMIT A LEGALLY SUFFICIENT DISMISSAL OF ALL CASES AND THEN I WOULD MAKE SUBSEQUENT ORDERS WITH RESPECT TO THEN WHAT THE MASTER DOES WITH RESPECT TO THE EXCHANGE OF THOSE DOCUMENTS.

THERE IS A LEGEND WHICH WAS SUGGESTED BY ONE OF THE PARTIES WHICH WOULD BE PLACED ON STOCK CERTIFICATES AND SO I NEED TO HEAR FROM THE PARTIES WITH RESPECT TO WHETHER YOU HAVE ANY OBJECTION TO THE JUDGMENT AND INCORPORATING THAT LEGEND.

THERE IS A REQUEST IN THE VARIOUS SUBMISSIONS THAT THE COURT SPEAK TO VARIOUS ASSETS, PARTICULARLY WEB SITES AND THOSE TYPES OF THINGS. THERE WAS NOTHING ABOUT THAT IN THE SETTLEMENT AGREEMENT ITSELF, AND SO THE COURT IS DISPOSED TO LEAVE THAT TO MATTERS OF ORDINARY BUSINESS TRANSACTIONS THAT FOLLOW THE ENFORCEMENT OF THE SETTLEMENT AND THE EXCHANGES THAT ARE REQUIRED IN THE SETTLEMENT.

I AM CONCERNED THAT IN ORDER TO BE EFFECTIVE IN ITS ENFORCEMENT, THE COURT SHOULD IMPOSE ON THE PARTIES A REQUIREMENT THAT THEY NOT TAKE ANY ACTION WHICH WOULD INTERFERE WITH THE

ABILITY TO FULFILL THE TERMS OF THE AGREEMENT AND I DIDN'T KNOW HOW FAR TO GO WITH RESPECT TO THAT.

AND THEN THE COURT DOES INTEND TO RETAIN JURISDICTION TO ENFORCE THE JUDGMENT, AND I THINK THAT IS ALSO INHERENT IN THE AGREEMENT ITSELF TO RETAIN JURISDICTION GIVEN TO IT BY THE PARTIES TO ENFORCE THE TERMS OF THE AGREEMENT ITSELF.

ALL RIGHT. SO WITH THAT LET ME PAUSE AND SEE IF THE PARTIES WISH TO SPEAK FURTHER.

MR. CHATTERJEE: YOUR HONOR, IF I MAY. NEEL CHATTERJEE FOR FACEBOOK AND MARK ZUCKERBERG. WE ALSO DIDN'T DO APPEARANCES FOR THIS MOTION.

I SAW YOU MIGHT HAVE LOOKED COMPLEX AT THE GENTLEMAN STANDING RIGHT NEXT TO ME AND I THOUGHT IT MIGHT BE GOOD TO HAVE APPEARANCES.

MR. VAN DALSEM: BRUCE VAN DALSEM FROM QUINN EMANUEL. WE'RE LIEN CLAIMANT IN THE CASE.

THE COURT: I APPRECIATE THAT YOU ARE NOW IDENTIFYING YOURSELF. I DID NOT INTEND TO IN MY STATEMENT SAY ANYTHING ABOUT THE LIEN CLAIMANT THAT HAS COME TO MY ATTENTION.

SO FAR AS THE COURT IS KNOWLEDGEABLE, THERE HAS BEEN A NOTICE OF A LIEN THAT I HAVE SEEN, BUT I DON'T KNOW THE BONA FIDES OF IT. IT DOES SEEM TO ME THAT ANY EFFECT THAT THAT WOULD HAVE ON

MY JUDGMENT, IT HAS TO BE SOMEHOW ADJUDICATED IN SOME WAY, UNLESS THE PARTIES STIPULATE TO HOW TO HANDLE IT.

I DO INTEND THAT HAVING FILED IT, YOU MAY INTERJECT YOURSELF IN THE PROCESS SOMEHOW.

I HAVEN'T FIGURED OUT WHAT THAT IS FOR PURPOSES OF MAKING SURE THAT, THAT ANY, ANY -- THAT OUR DISBURSEMENTS ARE CONSISTENT WITH ANY CLAIM THAT YOUR CLIENT WOULD MAKE.

MR. VAN DALSEM: YOUR HONOR, IF THE COURT WOULD ENTERTAIN IT, I WOULD LIKE TO SPEAK TO THOSE ISSUES WHEN APPROPRIATE.

THE COURT: SURE, IN DUE COURSE. AND MAYBE THIS IS THE POINT, BUT I WANTED TO GIVE AT LEAST THE PARTIES TO THE LITIGATION AN OPPORTUNITY TO COMMENT ON THE FORM OF THE JUDGMENT I INTEND TO FILE.

MR. CHATTERJEE: THANK YOU, YOUR HONOR. AND THE ONE OTHER THING I JUST WANTED TO RAISE IS THAT I DID RECEIVE AN E-MAIL TWO DAYS AGO FROM THE FINNEGAN HENDERSON FIRM MAKING AN ASSERTION THAT THEY MAY ALSO FILE FOR A LIEN AGAINST ANY PROCEEDS IN THIS CASE. THEY HAVEN'T FILED ANYTHING WITH THE COURT, BUT IT'S OF CONCERN TO US BECAUSE FACEBOOK WANTS TO MAKE SURE THAT ONCE THEY HAVE GIVEN THE

CONSIDERATION, THERE IS NOTHING HANGING OUT THERE AND SOMEONE CAN TRY ASSERT AGAINST FACEBOOK AND THE OTHER INDIVIDUALS WHO ARE SETTLING IN THIS CASE.

PERHAPS -- I SEE MR. MOSKO STANDING UP. PERHAPS HE CAN ADDRESS THAT ISSUE.

THE COURT: COUNSEL.

MR. MOSKO: YES, SCOTT MOSKO, YOUR HONOR, REPRESENTATIVE OF ALL OF THE DEFENDANTS HERE AS WELL AS ONE OF THE PARTNERS AT FINNEGAN HENDERSON.

THE COURT SHOULD BE AWARE THAT, IN FACT, FINNEGAN HENDERSON HAS PERFECTED LIENS WITH RESPECT TO THIS MATTER.

FINNEGAN HENDERSON IS NOT TAKING THE SAME POSITION AS QUINN EMANUEL.

I UNDERSTAND THE COURT DOES NOT INTEND TO MAKE ANY REFERENCE TO THE LIENS IN THE JUDGMENT AND WITH RESPECT TO THAT FINNEGAN HENDERSON IS FINE.

WE INTEND TO WORK CLOSELY WITH OUR CLIENT AND BELIEVE THAT THAT MATTER WILL BE RESOLVED WITHOUT ANY KIND OF A REFERENCE TO THE LIENS IN THE JUDGMENT. AND WITH RESPECT TO THAT, I HAVE NOTHING MORE TO SAY.

MR. CHATTERJEE: SO, UM -- THANK YOU.

YOUR HONOR, AS TO THE ESCROW AGENT OR SPECIAL MASTER, WHICH I'LL ADDRESS -- IS THE POINT

I'LL ADDRESS FIRST.

THE STRUCTURE THAT WAS PUT IN PLACE, AT LEAST FROM FACEBOOK'S PERSPECTIVE AS FAR AS HAVING THIS SPECIAL MASTER ADMINISTER HOW TO RELEASE FUNDS OR STOCK AND HOW TO RELEASE OTHER KINDS OF CONSIDERATION IN THE TRANSACTION, WAS REALLY BECAUSE OF THE FACT THAT THERE WAS THIS NOTICE OF LIEN HANGING OUT THERE.

IT WAS REALLY TO MAKE SURE THAT THE SPECIAL MASTER OR WHOEVER THE NEUTRAL WAS THAT WAS HOLDING ON TO THE PROPERTY WAS -- HOLD ON TO IT ESSENTIALLY IN TRUST TO MAKE SURE THAT THE PROCEEDS WERE DISTRIBUTED ACCORDINGLY AND THAT FACEBOOK WOULD NO LONGER HAVE TO DEAL WITH ANY ISSUES ASSOCIATED WITH THIS NOTICE OF LIEN.

I THINK YOUR HONOR IS CORRECT, WE DON'T KNOW ANY OF THE PARTICULARS OF IT SO WE DON'T WANT TO HAVE AN UNKNOWN CLAIM AGAINST A COMPANY THAT WE BELIEVE WE NOW OWN HANGING OUT THERE AGAINST IT.

AND THEY FILED A NOTICE. WE HAVE TO PROTECT OUR INTEREST. BUT REALLY THE ESCROW PROPOSAL THAT BOTH PARTIES MADE AT LEAST FROM OUR PERSPECTIVE WAS TO DEAL WITH THAT ISSUE.

IF YOUR HONOR WERE TO RULE THAT FACEBOOK/CONNECTU, ONCE IT'S IN THE HANDS OF

FACEBOOK AND THE OTHER INDIVIDUALS WHO ARE ON OUR SIDE OF THE CASE WHO HAVE SETTLED OUT, DON'T REALLY HAVE ANY RESPONSIBILITIES AS TO THE NOTICE OF LIEN THAT HAS BEEN FILED, THAT ACTUALLY MAKES THE JUDGMENT CONSIDERABLY SIMPLER.

AND, AND IT'S -- FROM OUR PERSPECTIVE AT THAT POINT IT'S JUST A TIMING QUESTION AND WE BELIEVE THAT, THAT THEY SHOULD JUST BE ORDERED TO HAND US ALL OF THE STOCK TO THE COMPANY WITHIN 30 DAYS OF ENTRY OF JUDGMENT. WE DON'T NEED AN ESCROW AGENT AT ALL.

THERE IS KIND OF A LINGERING TIMING ISSUE, EVEN WERE A SPECIAL MASTER TO BE APPOINTED. IF A SPECIAL MASTER WERE TO BE APPOINTED, WE DO HAVE TO ANSWER THE QUESTION OF WHO IS GOING TO CONTINUE TO MAINTAIN THE CONNECTU BUSINESS FROM THE TIME OF ENTRY OF JUDGMENT UNTIL WHATEVER TIME THOSE PROCEEDS ARE DISTRIBUTED.

CONNECTU DOES HAVE A BUSINESS AND IT HAS A WEB SITE AND IT HAS OPERATING EXPENSES. I DON'T BELIEVE IT HAS EMPLOYEES, BUT IT CERTAINLY HAS PEOPLE DOING WORK ON ITS BEHALF.

ONE OF THE THINGS WE WERE TALKING ABOUT AS WE WERE TRYING TO WORK UP THE JUDGMENT ON OUR SIDE OF THE CASE IS THAT IF WE DON'T GET THE

COMPANY WITHIN A VERY SHORT TIME PERIOD AND WE HOLD ON -- OR A SPECIAL MASTER OR SOMEONE WERE TO HOLD ON TO IT THROUGH THE FINAL PIECES OF THE APPEALS OR THE FINAL COURT AND HOW IS THAT PIECE GOING TO BE MANAGED?

PERHAPS THE SPECIAL MASTER IS GOING TO DO IT. HOW IS THAT GOING TO BE FUNDED? AND THAT'S A DIFFICULT QUESTION IN OUR VIEW.

AND OUR PREFERENCE IS TO HONOR THE SETTLEMENT AGREEMENT AND WE GET CONTROL OF THE COMPANY THROUGH OWNING THE SHARES AND WE WILL CONTINUE TO OPERATE IT AND THE REST OF THE ASSETS OF THE COMPANY AS IS NECESSARY.

THE ISSUE OF COST FOR THE SPECIAL MASTER IS AN IMPORTANT ISSUE FROM OUR PERSPECTIVE BECAUSE, AGAIN, FROM OUR PERSPECTIVE THE ONLY REASON THAT A SPECIAL MASTER OR A COURT APPOINTED PERSON WOULD HAVE THIS KIND OF A ROLE WOULD REALLY BE BECAUSE OF A DISPUTE BETWEEN QUINN EMANUEL AND THE CONNECTU FOUNDERS.

WE REALLY AREN'T INVOLVED IN THAT, AND WE DON'T THINK WE SHOULD HAVE TO PAY FOR A FIGHT BETWEEN THOSE PARTIES.

THE COURT: WELL, I DON'T AGREE THAT'S THE ONLY REASON. THE REASON THAT I'M CONTEMPLATING

IS THAT YOU ALL WERE UNABLE TO DO IT ON YOUR OWN AND YOU CAME TO THE COURT AND ASKED ME TO ENFORCE IT AND IN THE ENFORCING OF IT, IT REQUIRES STEPS.

AND IT'S NOT A MATTER THAT I CAN DO WITHOUT PUTTING SOMEONE IN THE MIDDLE TO COLLECT THINGS IN ORDER TO MAKE SURE EVERYTHING IS, IS, IS -- GOES ACCORDING TO THE AGREEMENT.

SO THAT'S WHY I'M CONTEMPLATING REQUIRES THE MASTER IN THE FIRST PLACE AND ALSO REQUIRING THAT THE PARTIES SHARE THE COST OF THAT.

I DON'T CONTEMPLATE THAT IT WOULD BE A LONG DRAWN OUT AFFAIR, ALTHOUGH THINGS CAN OVERTAKE THE TIMING THAT I ACTUALLY DON'T CONTEMPLATE HERE, NOR DO I CONTEMPLATE THAT THE COST OF SOMEONE TO DO THIS WOULD BE PROHIBITED.

MR. CHATTERJEE: THANK YOU, YOUR HONOR. THE ONLY CAVEAT TO THAT POINT IS IF QUINN EMANUEL IS GOING TO SEEK TO INTERVENE IN THAT TRANSACTION AND PROLONG THE SPECIAL MASTER'S ROLE AND INCREASE THE EXPENSE, WE THINK THEY SHOULD HAVE TO PARTICIPATE IN THE COST OF IT.

THE COURT: WELL, THAT'S A FAIR POINT.

MR. BARRETT: YOUR HONOR, IF I COULD SPEAK TO A COUPLE OF THOSE POINTS. DAVID BARRETT FOR FACEBOOK.

MR. UNDERHILL: NO, FOR CONNECTU.

MR. BARRETT: I'M SORRY. DAVID BARRETT FOR CONNECTU.

WE CERTAINLY WOULD BE SUPPORTIVE OF THE IDEA OF AN ESCROW AGENT APPOINTED BY THE COURT.

ONE ASPECT OF THE PROPOSED JUDGMENTS ON WHICH THE PARTIES ARE IN AGREEMENT, YOUR HONOR, IS THAT BOTH OF THE FORMS OF JUDGMENT THAT THE PARTIES SUBMITTED TO THE COURT INDICATED THAT THE CLOSING, IF YOU WILL -- I'M PUTTING TO ONE SIDE THE QUINN EMANUEL ISSUE FOR THE MOMENT -- BUT JUST THE DEPOSIT OF THE SHARES OF STOCK WITH THE RESPECTIVE COMPANIES AND THE CASH WOULD OCCUR EITHER AFTER CONNECTU IRREVOCABLY WAIVED ITS RIGHT TO APPEAL THE JUDGMENT OR WITHIN FIVE DAYS AFTER ANY APPEALS THAT ARE TAKEN BECOME FINAL.

THE COURT: I SAW THAT IN AT LEAST ONE OF THE PROPOSALS.

IT CREATED FOR ME A PROBLEM BECAUSE THERE CAN -- AN ARGUMENT CAN BE MADE THAT A JUDGMENT IS NOT APPEALABLE UNTIL THE FINAL ACT REQUIRED UNDER THE JUDGMENT TAKES PLACE WHICH MAKES IT A CIRCUITOUS SITUATION BECAUSE JUST MY MAKING A JUDGMENT IF I SET UP A SITUATION THAT HAS TO TAKE PLACE AND PEOPLE SAY I DON'T REALLY HAVE TO APPEAL

THAT UNTIL I'M REQUIRED TO TAKE THAT ACT, WHICH MEANS THAT IT NEVER COMES, PERHAPS.

MR. BARRETT: I THINK THERE ARE PROBABLY TWO WAYS OUT OF THAT, YOUR HONOR. ONE IS THAT THIS IS THE FUNCTIONAL EQUIVALENT OF A STAY.

THE OTHER IS THAT THE COURT'S PROPOSED SOLUTION, WHICH AS I NOW UNDERSTAND WHAT YOU'RE SAYING IS, WHICH IS THAT THE, THAT THE CONSIDERATION WOULD GO INTO THE CONTROL OF THE SPECIAL MASTER WITHIN SOME RELATIVELY BRIEF PERIOD OF TIME AND THEN, YOU KNOW, WHAT WE'RE CONCERNED ABOUT, YOUR HONOR, AND BOTH SIDES ARE PROBABLY CONCERNED ABOUT, IS THAT EACH SIDE IS GIVEN CONSIDERATION HERE.

THERE IS A POSSIBILITY THAT THE JUDGMENT WOULD BE REVERSED ON APPEAL AND IF YOU HAVE DONE THINGS LIKE GET RELEASES, DISMISSED CASES NOT JUST IN THIS CASE BUT IN THE MASSACHUSETTS COURT, HAND OVER THE COMPANY AND HAND OVER CASH FOR THAT MATTER, UNSCRAMBLING THAT IN THE EVENT OF A REVERSAL COULD BECOME, YOU KNOW, MUCH MORE COMPLICATED THAN JUST SITTING THERE AND MAINTAINING THE STATUS QUO, ALTHOUGH I THINK I WOULD LIKE TO CONSULT WITH MY COLLEAGUES ON THIS, BUT I THINK IF THE STATUS QUO IS MAINTAINED ESSENTIALLY BY A

SPECIAL MASTER SITTING THERE WITH THE ASSETS DURING THE APPEAL PROCESS, AND WE CAN TALK ABOUT MANAGING OF THE CONNECTU ASSET, I DON'T THINK THAT IS GOING TO BE ANY SIGNIFICANT PROBLEM, YOUR HONOR.

I THINK IT CAN -- WE ARE HAPPY TO HE -- AND MR. UNDERHILL CAN DISCUSS THIS FURTHER IF YOU WOULD LIKE -- WE'RE HAPPY TO MAINTAIN AND CONTINUE TO RUN THAT BUSINESS ESSENTIALLY THE WAY THAT IT HAS BEEN RUN AND NOT TO DO ANYTHING AS YOUR HONOR INDICATED THAT WOULD MATERIALLY AFFECT IT IN A NEGATIVE WAY OR TAKE ON OBLIGATIONS THAT WOULD BE INAPPROPRIATE AND WE CAN KEEP, YOU KNOW, FACEBOOK INFORMED ABOUT THAT.

I DON'T THINK THAT THAT SHOULD BE A PROBLEM. AND WE'RE ALSO HAPPY TO PURSUE THE APPELLATE PROCESS AS EXPEDITIOUSLY AS THE NINTH CIRCUIT WOULD ALLOW US.

THERE ARE ALSO A COUPLE OF OTHER ITEMS THAT YOUR HONOR RAISED. I DON'T KNOW IF YOU WANT TO TALK ABOUT THOSE AT THIS POINT.

THE COURT: MY FOCUS IS ON THE FORM OF THE JUDGMENT AS I OUTLINED IT. IF YOU WANT TO ADDRESS THOSE MATTERS FURTHER.

IT DOES SEEM TO ME THAT THERE IS GOING TO BE -- THE REASON I'M PUT IN THIS POSITION IS THAT

THERE WILL BE THE NECESSITY OF THE COURT TAKING FURTHER ACTION TO ENFORCE THE JUDGMENT ONCE THE JUDGMENT IS IN PLACE THAT I CAN'T CONTEMPLATE THE -- THOSE ORDERS AT THIS POINT.

AND IT COULD BE THAT I'LL HAVE TO AMEND THE JUDGMENT AND DO OTHER THINGS TO TAKE THOSE ADDITIONAL STEPS.

SO MY FOCUS IS ON SHOW ME WHY I SHOULDN'T ENTER THE JUDGMENT AS I OUTLINED JUST TO GET THIS PROCESS STARTED?

MY GOAL WOULD BE TO PUT IN PLACE A JUDGMENT WHICH WOULD ENFORCE THE SETTLEMENT AGREEMENT AND IF THERE ARE APPEALS OR CHALLENGES TO IT THAT DEAL WITH THAT AS A CIVIL PROCEDURE MATTER IN THE ORDINARY COURSE OF EVENTS, IF THAT SHOULD COME.

BUT IF THERE IS SOMETHING ELSE ON THE FORM THE JUDGMENT, SPEAK NOW.

MR. BARRETT: YES, YOUR HONOR. YOU RAISED THE QUESTION ABOUT THE LEGEND ON THE -- THE FACEBOOK SHARES THAT WILL BE PROVIDED AS PART OF THE JUDGMENT AND THE LEGEND, THE FORM OF LEGEND THAT IS ATTACHED TO EACH SIDE PROPOSED JUDGMENT IS IDENTICAL, EXCEPT IN ONE RESPECT BUT IT IS A SIGNIFICANT RESPECT.

AND THOSE LEGENDS APPEAR IN EXHIBIT B OF DEFENDANT'S PROPOSED JUDGMENT AND IN EXHIBIT 3 OF FACEBOOK'S PROPOSED JUDGMENT. AND, AND THE -- WHAT I'M REFERRING TO IS THAT OUR PROPOSED JUDGMENT HAS IT IN A PART OF THE LEGEND THE STATEMENT THAT THE HOLDERS OF SUCH SHARES ARE ENTITLED TO THE SAME ANTI-DILUTION RIGHTS AFFORDED TO THE ISSUERS SERIES D PREFERRED STOCK AS PROVIDED IN THE TERM SHEET AND SETTLEMENT AGREEMENT.

FOR REASONS -- I'M NOT SURE, MAYBE IT WAS NOT INTENTIONAL, THE LEGEND THAT FACEBOOK PROPOSES OMITS THAT SENTENCE ENTIRELY.

AND CONSISTENT WITH EXACTLY WHAT YOUR HONOR SAID THAT THIS, THAT THIS SETTLE -- THAT THIS JUDGMENT IS GOING TO ENFORCE PRECISELY THE TERMS THAT THE PARTIES AGREED TO ON THE TERM SHEET, WE BELIEVE THAT THAT LANGUAGE SHOULD BE IN THERE. IT'S RIGHT ON THE SECOND PAGE.

I BELIEVE OURS IS ALMOST VERBATIM FROM THE SECOND PAGE OF THE HANDWRITTEN TERM SHEET.

YOU KNOW, FIRST IT SAYS THAT THE SHARES SHALL BE VOTED IN ACCORDANCE WITH THE BOARD OF DIRECTORS RECOMMENDATIONS. THAT'S IN BOTH VERSIONS.

BUT FOR SOME REASON THE FACEBOOK VERSION

DROPS THE SECOND PART OF THAT SAME SENTENCE WHICH SAYS, "SUBJECT TO THE SAME ANTI-DILUTION PROTECTIONS AWARDED TO SERIES D PREFERRED STOCK."

SO WE THINK THAT THAT NEEDS TO BE IN THERE AND IT SHOULD ALSO BE CLEAR I THINK, YOUR HONOR, BUT I JUST WANT TO MAKE SURE THAT THE RECORD REFLECTS THIS, THAT THOSE RESTRICTIONS THAT WERE SET FORTH IN THE TERM SHEET ARE THE ONLY RESTRICTIONS OF ANY KIND OTHER THAN THOSE THAT, THAT FLOW FROM THE FACT THAT THIS IS A PRIVATE COMPANY, AND, THEREFORE, THE SECURITIES ARE UNREGISTERED.

THOSE ARE THE ONLY RESTRICTIONS THAT SHOULD ATTACH TO THIS STOCK.

AS YOUR HONOR MAY RECALL, THERE IN THE NEGOTIATIONS THAT THE PARTIES HAD SUBSEQUENT TO THE SIGNING OF THE TERM SHEET THERE WERE DISCUSSIONS OF OTHER POSSIBLE RESTRICTIONS SUCH AS THE RIGHT OF FIRST OFFER AND A LOCK UP AND THOSE ARE NOT RESTRICTED IN THE TERM SHEET.

AND AS YOUR HONOR SAID VERY CLEARLY AT PAGE 60 OF THE TRANSCRIPT FROM LAST MONDAY, "THIS IS, THIS IS COMMON STOCK. IT DOESN'T SAY ANYTHING ABOUT IT BEING LETTERED STOCK IN ANY WAY. IT OUGHT TO BE FREELY TRADED."

AND I BELIEVE THAT THAT IS ACCOMPLISHED BY THIS LANGUAGE THAT WE HAVE HERE AND -- BUT I JUST WANT TO BE CLEAR AND THAT THE COURT IS CLEAR THAT THOSE RESTRICTIONS OR STIPULATIONS THAT WE HAVE OUTLINED TO GO ON THE STOCK ARE THE ONLY ONES.

LET ME SEE IF THERE ARE ANY OTHERS.

THE COURT: WHILE YOU'RE DOING THAT, LET ME JUST CHECK, IS THERE ANY OBJECTION TO INCLUDING THE ADDITIONAL LANGUAGE IN THE EXHIBIT B SUBMITTED BY CONNECTU?

MR. CHATTERJEE: YOUR HONOR, THE ONLY POINT I'LL MAKE IS THAT I DON'T THINK IT'S NECESSARY YOU'RE ENFORCING THE TERM SHEET AND SETTLEMENT AGREEMENT. IT HAS THE PROVISION IN THERE. AND IT DOESN'T SEEM LIKE IT'S NECESSARY OR LEGALLY REQUIRED ON THE LEGEND. THAT WAS THE ONLY POINT THAT I WAS GOING TO MAKE, BUT I'LL DEFER TO THE COURT'S JUDGMENT ON WHICH LEGEND IS APPROPRIATE.

THE COURT: VERY WELL. IT IS A RIGHT THAT SEEMS TO BE INHERENT IN THE STOCK AND THE CERTIFICATE ITSELF BEARING IT, SINCE I PRESUME THESE ARE NEGOTIABLE, BEARING IT WOULD CARRY THOSE RIGHTS. SO I WOULD ADD IT.

DID YOU COME UP WITH OTHER MATTERS?

MR. BARRETT: UM, UM -- YOUR HONOR, I JUST THINK ONE OTHER SIGNIFICANT ONE WHICH IS YOUR HONOR INDICATED THAT ONE OF THE DOCUMENTS THAT THE SPECIAL MASTER WOULD COLLECT WOULD BE RELEASES.

OUR, OUR -- I THINK THAT WE CAN SIMPLIFY THIS AND I DON'T REALLY THINK THAT THAT IS NECESSARY OR EVEN NECESSARILY CONSISTENT WITH BOTH WHAT MR. CHATTERJEE REPRESENTED TO THE COURT LAST MONDAY AND REALLY THE SPIRIT AS I UNDERSTAND IT OF THE COURT'S ORDER FOR THE FOLLOWING REASON:

WHAT MR. CHATTERJEE TOLD THE COURT AND WHAT HE WAS ASKING AND WHAT I THINK THE COURT DID AT PAGE 12 OF THE TRANSCRIPT TO ENTER A JUDGMENT TELLING THE PARTIES TO COMPLY WITH THE TERM SHEET AND SETTLEMENT AGREEMENT AND ESSENTIALLY STAPLE IT ONTO THE JUDGMENT.

AND I THINK WHAT WE WERE TRYING TO DO IN OUR PROPOSED SETTLEMENT IS TO ADHERE AS CLOSELY AS WE COULD TO THAT WHERE IT WAS POSSIBLE.

NOW, IT'S OBVIOUSLY NOT POSSIBLE. YOU HAVE TO GET A RULE 41 DISMISSAL AND FILE IT IN COURT WITH RESPECT TO THE LEGEND ON THE STOCK. IT'S NECESSARY TO DO THAT BECAUSE YOU'RE ACTUALLY CREATING AN INSTRUMENT THAT IS, AS THE COURT SAID, A NEGOTIABLE INSTRUMENT THAT IS PART OF THE

CONSIDERATION. SO IT'S NECESSARY TO DEFINE WHAT THAT INSTRUMENT SAID.

BUT BEYOND THAT, AND PARTICULARLY WITH RESPECT TO THE RELEASE, I DON'T REALLY THINK THAT IT'S NECESSARY OR CONSISTENT WITH, AGAIN, THE IDEA THAT THE COURT EXPRESSED AT PAGE 60 THAT YOU CAN ENFORCE THIS AGREEMENT AND NOTHING MORE.

WITH RESPECT TO THE RELEASES, YOUR HONOR, THAT'S AN ISSUE ON WHICH THE PARTIES HAVE GONE BACK AND FORTH. THEY WENT BACK AND FORTH FOR TWO MONTHS AFTER THE TERM SHEET. WE HAVE GONE BACK AND FORTH IN THE LAST COUPLE OF DAYS.

WE HAVE GOTTEN CLOSER, BUT WE STILL DON'T HAVE AN AGREEMENT ON IT.

AND IT SEEMS TO ME THAT, THAT WHAT YOU HAVE REALLY GOT HERE IS YOU HAVE GOT A RELEASE IN PARAGRAPH 2.

IT SAYS ALL PARTIES GET MUTUAL RELEASES AS BROAD AS POSSIBLE. THAT'S WHAT THE PARTIES NEGOTIATED. THAT'S IN THERE. IT IS MEANINGFUL LANGUAGE.

IF ONE OF US EVER SUES THE OTHER ONE WITH RESPECT TO A RELEASE CLAIM, THE PARTY THAT HAS BEEN SUED, IF THEY THINK IT'S A GOOD DEFENSE, CAN GO INTO THAT COURT AT THAT TIME AND SAY --

THE COURT: WELL, LET ME -- I HEAR YOUR ARGUMENT AND I DON'T ACCEPT IT, BUT I DO PROPOSE THAT IN THE FORM OF THE JUDGMENT, BECAUSE I WILL MAKE A JUDGMENT ABOUT THAT, YOU WILL BE ABLE TO MAKE THIS ARGUMENT AT A LATER TIME.

IN OTHER WORDS, WHAT I HEAR YOU SAYING IS THAT THE PARTIES, I SHOULD NOT REQUIRE A SIGNED RELEASE BECAUSE THE SETTLEMENT AGREEMENT IS A SIGNED RELEASE AND I SHOULD INTERPRET THE WORD GET RELEASED AS ARE RELEASED. AND I'LL LISTEN TO THAT ARGUMENT. IT'S JUST AT THIS POINT MY JUDGMENT WILL REQUIRE THAT THE RELEASE BE SUBMITTED AS APPROVED OF THE COURT.

IF I DECIDE THAT THE AGREEMENT IS SUFFICIENT, AND I'LL ORDER THAT TO BE DEPOSITED AND THAT WILL BE SUFFICIENT.

PART OF WHAT I ANTICIPATE IS AN ARGUMENT BY ONE OR BOTH PARTIES THAT SUBSEQUENT LITIGATION VIOLATES WHAT WAS BEING RELEASED, AND I WANT TO, IN TRUE TO THE ROLE THAT YOU HAVE GIVEN ME TO ENFORCE THE AGREEMENT, IS TO ENFORCE THE RELEASE.

AND PART OF THAT WILL BE TO UNDERSTAND WHAT WAS RELEASED AND THAT IS BETTER DONE LATER ON.

SO LET ME RESPOND TO YOUR ARGUMENT IN THAT WAY AND ASK YOU IF THERE ARE OTHER PARTS OF IT

THAT YOU WANT TO SPEAK TO.

MR. BARRETT: AND AGAIN, YOUR HONOR, I THINK A LITTLE BIT OF THE CONFUSION HERE DOES ARISE FROM THE TIMING ISSUE.

FOR EXAMPLE, IF THE RELEASE BECAME EFFECTIVE, LET'S SAY AFTER ALL APPEALS HAVE BEEN EXHAUSTED, THEN IT MAKES SENSE TO RELEASE, FOR EXAMPLE, OUR FRAUD DEFENSE, OR OUR FRAUD CLAIM BASED ON WHAT HAPPENED IN THE MEDIATION.

I DON'T THINK IT MAKES SENSE, AND I DON'T THINK THE COURT WOULD REQUIRE US TO RELEASE THAT CLAIM NOW.

MAYBE I'M MISTAKEN ABOUT THAT. IN OTHER WORDS, WE SHOULDN'T HAVE TO FACE AN ARGUMENT OR AT LEAST ANYMORE, AN ARGUMENT THAN WE ALREADY HAVE TO FACE THAT, THAT BY SIGNING THIS DOCUMENT WE DIDN'T RELEASE A CLAIM THAT THE TERM SHEET ITSELF WAS PROCURED BY FRAUD IN THE INDUCEMENT.

THE COURT: WELL, I DON'T KNOW THE ANSWER TO THAT, BUT I DO KNOW THAT THAT IS A LEGITIMATE QUESTION TO ASK WITH RESPECT TO WHAT I TAKE AS THE SUBMISSION.

IT SEEMS TO ME THAT MY JUDGMENT THAT I'M INTENDING TO ENTER RULES AGAINST SOME OF THAT CLAIM.

MR. BARRETT: UH-HUH.

THE COURT: WHICH IS WHY YOU CAN APPEAL IT?

MR. BARRETT: TRUE.

THE COURT: AS OPPOSED TO YOUR LATER ABILITY TO BRING IT.

BUT I DON'T WANT TO DO THAT AT THIS POINT BECAUSE I HAVE NOT PUT MYSELF IN A POSITION WHERE I KNOW ENOUGH TO MAKE A JUDGMENT ABOUT THAT.

MR. BARRETT: AND, YOUR HONOR, ANOTHER QUESTION ABOUT THE TIMING. OBVIOUSLY I THINK EVEN MR. CHATTERJEE AND I CAN PROBABLY AGREE ON THE TERMS OF WHAT RULE 41 DISMISSAL FOR THE CASES WOULD LOOK LIKE AND INDEED IT SETS FORTH HERE, "DISMISS WITH PREJUDICE. EACH SIDE TO BEAR THEIR OWN COSTS AND ATTORNEYS' FEES."

THE COURT: THE PARTIES ARE FREE TO STIPULATE, AFTER I ENTER MY JUDGMENT TO THE -- THAT THEY HAVE DONE WHATEVER THEY WANT, BUT I'M NOT GOING TO RELY UPON THAT PROPOSED STIPULATION BECAUSE IT'S A PROPOSED STIPULATION THAT I HAVEN'T SEEN THE PARTIES PUT TOGETHER JUST YET.

MR. BARRETT: SURE. YOUR HONOR, MY -- I'M SORRY -- MY QUESTION IS NOT ABOUT THE TERMS OF IT BECAUSE I THINK ON THAT WE'RE PROBABLY BOTH

PRETTY CLEAR.

MY QUESTION IS, AGAIN, PURELY ONE OF PROCEDURE AND TIMING.

I THINK IT WOULD BE BOTH DIFFICULT AND PROBABLY INCONVENIENT FOR THE COURTS TO, TO -- FOR US TO FILE A STIPULATION OF DISMISSAL, FOR EXAMPLE, WHILE THIS JUDGMENT IS UNDER APPEAL.

IT WOULD MAKE A LOT MORE SENSE TO WAIT UNTIL.

THE COURT: I DON'T INTEND TO HAVE IT FILED. MY FOCUS IS THAT IT HAS TO BE DEPOSITED.

MR. BARRETT: SURE. OKAY. THAT'S --

THE COURT: I'LL JUDGE WHEN IT -- MY PROPOSED JUDGMENT WOULD SAY THAT IT'S UP TO THE COURT TO SAY TO THE MASTER "NOW, SEND THESE THINGS FORWARD."

MR. BARRETT: UH-HUH.

THE COURT: AND, AND -- BUT I UNDERSTAND YOUR POINT.

MR. BARRETT: YEAH. SO, YOU KNOW, AGAIN, IN THAT REGARD, YOUR HONOR, WE, WE BELIEVE, AND I BELIEVE AGAIN THAT THE PARTIES ARE IN AGREEMENT THAT THAT SENDING FORTH, AS YOUR HONOR DESCRIBED IT, SHOULD AWAIT. THAT CAN COME IMMEDIATELY AFTER THE FINALITY OF ANY APPEALS PROCESS.

THE COURT: WELL, EVEN THAT IS SOMETHING THAT I'M NOT ADDRESSING IN MY JUDGMENT. I APPRECIATE YOUR HELPFUL SUGGESTION THAT MAYBE THE WAY AROUND THIS IS TO ENTER THE JUDGMENT AND STAY AN EXECUTION OF IT UNTIL SOME APPROPRIATE TIME.

MY PROPOSED LANGUAGE IS THAT THE COURT WILL APPOINT A SPECIAL MASTER TO ACCEPT AND MAINTAIN THE DEPOSITS MANDATED BY THIS JUDGMENT AND TO TAKE ACTIONS WITH THE DEPOSITS AS THE COURT FROM TIME TO TIME WILL ORDER.

IN OTHER WORDS, I JUST WANT TO PUT IT SOMEPLACE SO I CAN MAKE SURE THAT EVERYTHING THAT IS NECESSARY TO EXECUTE THE AGREEMENT IS IN ONE PLACE AND THEN TO HAVE, FROM THERE, SUBJECT ONLY TO THE ORDER OF THE COURT, THE ABILITY TO AFFECT THE EXECUTION SO THAT I DON'T HAVE TO GO ANY PLACE TO GET IT DONE.

THAT WAS MY GOAL.

MR. BARRETT: RIGHT.

MR. CHATTERJEE: AND -- GO AHEAD.

MR. BARRETT: I'M SORRY. ONE OTHER THING. IN THE PLAINTIFF'S PROPOSED FORM OF JUDGMENT THERE IS ALSO A PARAGRAPH THAT SAYS THAT THEY MAY FILE A MOTION FOR ATTORNEYS FEES OR BILL OF COST.

THE COURT: I HAVE NOT INCLUDED THAT.

MR. BARRETT: THANK YOU.

MR. CHATTERJEE: YOUR HONOR, AS TO THE PERFORMANCE ISSUES, THERE ARE A COUPLE OF DETAILS THAT I THINK ARE IMPORTANT.

ONE, ON THE ISSUE OF TIMING, WE WOULD AGREE WITH YOUR HONOR THAT THERE IS AN ISSUE AND IT OCCURRED TO US AFTER WE SUBMITTED THIS. AND I TOLD MR. BARRETT THAT IT WAS AN ISSUE FOR US YESTERDAY ABOUT WAITING UNTIL THE JUDGMENT IS FINAL AND NOT APPEALABLE.

WE THINK THAT IT SHOULD HAPPEN QUICKLY.

NOW, PERHAPS THAT'S SOMETHING BETTER LEFT FOR THE SPECIAL MASTER TO DECIDE ON THE TIMING TO REPORT TO THE COURT ON WHAT TO DO.

BUT IF THEY WANT TO STAY EXECUTION OF THE PROCEEDINGS, WE THINK TYPICALLY WHEN THEY TRY AND FILE A STAY OF EXECUTION OF A JUDGMENT, THEY NEED TO FILE A BOND SO WE CAN MAKE SURE THAT THE ASSETS THAT WE'RE PURCHASING ARE PROTECTED.

THAT'S A COLLATERAL ISSUE.

THE COURT: THAT'S WHY I THINK THE RULES OF CIVIL PROCEDURE WILL TAKE CARE OF ANY POST-JUDGMENT PROBLEM.

MR. CHATTERJEE: THE SECOND ISSUE, YOUR

HONOR, IS AS TO THE STOCK SHARES. THE, THE -- ONE OF THE ISSUES, AND PERHAPS THIS IS SOMETHING THAT THE SPECIAL MASTER CAN WORK OUT, IS AS LONG AS WE HAVE THE LIEN ISSUE UNRESOLVED AND HANGING OUT THERE, RIGHT NOW WE DON'T KNOW WHO TO WRITE THE STOCK CERTIFICATES TO.

DO WE LIST THE THREE -- OR I GUESS THE FOUR SHAREHOLDERS IN CONNECTU CURRENTLY OR DO WE INCLUDE QUINN EMANUEL ON THE SHARES?

WE WILL NEED SOME GUIDANCE AS TO HOW TO DO THAT.

THE COURT: THAT'S A DETAIL THAT THE MASTER CAN WORK OUT.

MR. CHATTERJEE: OKAY. THANK YOU, YOUR HONOR.

THE COURT: YES.

MR. VAN DALSEM: IF I MAY, BRUCE VAN DALSEM ON BEHALF OF QUINN EMANUEL.

THERE ARE A COUPLE OF POINTS THAT I WOULD LIKE TO RAISE WITH RESPECT TO THE COURT'S JUDGMENT.

BOTH PROPOSED FORMS OF JUDGMENT FROM THE PLAINTIFF AND THE DEFENDANT HAD MADE A PROVISION, ALBEIT IN DIFFERENT WAYS, TO SECURE THE LIEN AND THEY PROPOSED -- CONNECTU PROPOSED BASICALLY ESCROWING THE MAXIMUM AMOUNT OF THE FEE CLAIM AND

FACEBOOK PROPOSED ESCROWING ALL OF IT.

THIS IS AN UNUSUAL CASE IN THE CONTEXT OF A LIEN BECAUSE WHAT WOULD NORMALLY HAPPEN IN A SITUATION WHERE AN ATTORNEY FILES A NOTICE OF LIEN IS THAT WHEN THE DEFENDANT, ASSUME AN ALL CASH DEAL, WHEN A DEFENDANT GOES TO WRITE A CHECK, THEY INCLUDE THE LIEN CLAIMANT'S NAME ON THAT CHECK AND THE PARTIES EITHER WORK IT OUT OR IT GETS ESCROWED UNTIL THE MATTER IS LITIGATED OR THE PARTIES REACH SOME FORM OF RESOLUTION.

AND CALIFORNIA LAW PROVIDES THAT A DEFENDANT, SUCH AS FACEBOOK, WHO IS ON NOTICE OF THE LIEN, IS ON NOTICE OF OUR CLAIM TO A CONTRACTUAL RIGHT TO A FEE AND IF THEY FAIL TO INCLUDE THE FORMER LAW FIRM'S NAME AS A PAYEE ON WHATEVER PAYMENT INSTRUMENT IS ISSUED, THEY FACE POTENTIAL LIABILITY FOR INTERFERING WITH OUR CONTRACTUAL RIGHT AND THERE ARE CALIFORNIA CASES EXPLAINING ALL OF THAT.

SO IN THE NORMAL CASE AN ATTORNEY'S LIEN IS SORT OF EFFECTUATING BECAUSE WELL REPRESENTED DEFENDANTS SIMPLY WILL NOT TURN OVER THE MONEY TO A PLAINTIFF WITHOUT MAKING PROVISIONS FOR THAT LIEN.

SO WHAT WE WANT TO AVOID IS ANY PROCEDURE WITH THE SPECIAL MASTER THAT WOULD EXONERATE

FACEBOOK AND WE HAVE BEEN IN CONTACT WITH FACEBOOK'S COUNSEL AND HAVE EXPLAINED WHAT I JUST EXPLAINED TO THE COURT AND I THINK THAT LED TO FACEBOOK PROPOSING THAT ALL OF THE MONEY BE BASICALLY SEQUESTERED UNTIL SUCH TIME THAT THE LIEN CLAIM IS LITIGATED AND RESOLVED OR RESOLVED TO AGREEMENT.

OUR FIRM HAS THE RIGHT TO HAVE THE ENTIRETY OF THE SETTLEMENT AGREEMENT SEQUESTERED UNTIL SUCH TIME AS OUR CLAIM FOR ATTORNEYS' FEES IS PAID, AND SO WE WOULD WANT TO ENSURE THAT THE JUDGMENT WOULD NOT REMOVE ANY PROTECTION THAT WOULD OTHERWISE BE AFFORDED BY CALIFORNIA LAW AS I HAVE OUTLINED.

THE COURT: LET ME SPEAK JUST BRIEFLY TO THAT. FIRST, I DON'T INTEND TO TAKE ANY ACTION WITHOUT HEARING FURTHER FROM THE LEAD CLAIMANTS.

SECOND, IT WAS IMPOSSIBLE FOR ME TO TAKE ANY ACTION WITH RESPECT TO IT UP TO NOW BECAUSE IT WAS AN UNLIQUIDATED NUMBER.

IT WAS ACTUALLY WHAT I SAW HAD NO NUMBER ON IT.

I COULDN'T TELL WHETHER IT WAS $1 OR WHATEVER NUMBER.

IT WAS JUST A NOTICE, A NOTICE OF A LIEN.

IT DIDN'T HAVE -- IT WASN'T ANYTHING MORE THAN THAT.

AND AS I SAID EARLIER, I HAVE NOT GONE THROUGH THE TROUBLE AT THIS POINT OF FIGURING OUT WHETHER OR NOT THE LIEN HAS BEEN PERFECTED IN A WAY THAT THE COURT IS OBLIGATED TO ENFORCE IT.

I PRESUME THAT IT WILL BE IF IT HASN'T BEEN ALREADY.

IT DOES SEEM TO ME THAT THIS IS NOT AN UNCOMMON PROBLEM SO IT'S GOING TO BE EASY TO SOLVE IT.

I DO ENCOURAGE THE PARTIES TO BE IN CONVERSATION ABOUT IT AND SUGGEST WAYS OF DEALING WITH IT AS A GROUP.

AS I UNDERSTAND IT, THE CLAIM AS YOU JUST SAID MAY AFFECT THE STOCK CONSIDERATION AS WELL AS CASH, AND I DON'T KNOW WHAT TO MAKE OF THAT AT THIS POINT.

I HAVEN'T SEEN THE OTHER CLAIM LIEN AT THIS POINT SO I DON'T KNOW WHAT TO MAKE OF THAT AS WELL.

I DON'T KNOW WHAT THE PRIORITIES ARE AMONG YOU ALL AND SO ALL THAT I WOULD DO IS TO ALLOW YOU, AT SOME APPROPRIATE POINT, TO MAKE YOUR POSITIONS KNOWN WITH RESPECT TO THE ACTUAL

DISBURSEMENTS FROM THE DEPOSIT THAT THE COURT IS SETTING UP AND TO ASSERT YOUR RIGHTS.

MR. VAN DALSEM: SO MY SUGGESTION ON HOW TO SOLVE THIS PARTICULAR ISSUE -- WELL, FIRST OF ALL, LET ME SPEAK TO THE TIMING ISSUE AND THEN I'LL SPEAK TO PRACTICALLY HOW I ENVISION IT WORKING.

WE BELIEVE THAT THE SETTLEMENT CONSIDERATION SHOULD BE TENDERED FORTHWITH REGARDLESS OF WHAT HAPPENS WITH AN APPEAL BECAUSE THERE'S AN ISSUE OF INTEREST. AND BECAUSE THERE'S A SUM OF CASH AND THAT CASH SHOULD BE EARNING INTEREST, AND CERTAINLY IT'S OUR POSITION WITH RESPECT TO OUR FEE CLAIM THAT WE'RE ENTITLED TO THE MONEY ON THAT AND SO IF IT'S NOT PAID UNTIL AFTER AN APPELLATE PROCESS AND CONNECTU HAS LOST THE OPPORTUNITY TO EARN INTEREST ON THAT MONEY.

WE HAD CONCERNS WITH THE ESCROW PROCESS, BUT I AM SURE THAT IS GOING TO BE WORKED OUT WITH THE SPECIAL MASTER IN TERMS OF PRUDENT INVESTMENTS NOT ENCUMBERING THE ASSETS WHILE THEY'RE SITTING IN WHAT IS ESSENTIALLY AN ESCROW, DETAILS LIKE THAT THAT I ASSUME WOULD BE ADDRESSED.

BUT WE BELIEVE THE ACTUAL SETTLEMENT CONSIDERATION SHOULD BE TRANSFERRED FORTHWITH SO THAT IT HAS AN OPPORTUNITY TO EARN INTEREST.

WITH RESPECT TO OUR LIEN CLAIM, THE WAY I BELIEVE IT CAN BE RESOLVED IS AFTER THOSE FUNDS, WHATEVER THAT CONSIDERATION CONSISTS OF, IS TRANSFERRED TO THE SPECIAL MASTER, WE BELIEVE THAT THE JUDGMENT SHOULD PROVIDE THAT THERE BE NO DISBURSEMENT WITHOUT FURTHER ORDER OF THE COURT FOLLOWING ANY LIEN CLAIMANT OR ANYONE ELSE THAT FILES A CLAIM BECAUSE ONCE THAT MONEY IS DISBURSED THERE'S NO SECURITY INTEREST. THE MONEY HAS LEGS AND IT CAN GO ANYWHERE INSTANTLY AND OUR PROTECTION IS LOST THE MINUTE THAT MONEY IS NO LONGER SUBJECT TO THE SPECIAL MASTER'S CONTROL.

THE COURT: DO YOU SEE ANY REASON WHY I CAN'T, SINCE I SET UP THE DEPOSIT AND SAY I'M CONTROLLING IT IN A SUBSEQUENT ORDER, ADDRESS LIEN CLAIMANTS BECAUSE THIS MAY GO AWAY?

THERE MAY BE NO LIEN CLAIMANTS OR THERE MAY BE MULTIPLE LIEN CLAIMANTS. I HAVE NO IDEA WHO MAY ACTUALLY ASSERT A RIGHT TO THESE FUNDS AND AS COUNSEL FOR FACEBOOK INDICATED, AT THIS POINT THERE'S NO DIRECTION AS TO IN WHOSE NAME THE VARIOUS SHARES SHOULD BE MADE OR ANY OF THAT.

MR. VAN DALSEM: AS I UNDERSTAND IT, FACEBOOK'S OBLIGATION ONLY EXISTS TO A PRESENT LIEN CLAIMANT AND THERE'S ONLY ONE LIEN CLAIMANT AND

THAT'S MY LAW FIRM QUINN EMANUEL.

SO WHAT I WOULD SUGGEST IS THAT YOU DIRECT THE SPECIAL MASTER TO TAKE CONTROL OF THESE ASSETS AND PROVIDE THAT -- AND NONE OF THE ASSETS BE PROVIDED TO THE PARTIES AND WITHOUT CONSENT OF OR NOTICE OF AN OPPORTUNITY TO BE HEARD BY QUINN EMANUEL SO THAT WE CAN MAKE SURE THAT OUR RIGHTS ARE PROTECTED AS NORMALLY WOULD BE THE CASE IN A SELF-EFFECTUATING LIEN.

THE COURT: WHY DO I HAVE TO SAY THAT BECAUSE YOU HAVE TO COME BEFORE ME BEFORE YOUR LIEN IS RECOGNIZED.

MR. VAN DALSEM: THAT WOULD WORK AS WELL.

THE COURT: ALL RIGHT.

MR. VAN DALSEM: LET ME RAISE ONE PRACTICAL PROBLEM THAT I SEE. IF A JUDGMENT ISSUES AND IT IS APPEALED, THERE IS A RISK THAT THE COURT WILL BE DIVESTED OF JURISDICTION FOR FURTHER ORDERS PENDING THAT APPEAL AND IF WE HAVE ALL OF THESE ISSUES WITH THE SPECIAL MASTER AND WE CAN'T DO ANYTHING WITH THEM WITHOUT FURTHER ORDER OF THE COURT THAT NO LONGER HAS JURISDICTION AND THERE WILL BE A PROCEDURAL PROBLEM THERE.

THE COURT: THERE WILL BE A COURT WITH JURISDICTION. IT MAY NOT BE ME, BUT THERE WILL BE

A COURT WITH JURISDICTION FROM WHOM ACTION CAN BE TAKEN.

MR. VAN DALSEM: VERY WELL. SO THAT'S WHAT I HAVE TO ADD. THANK YOU.

THE COURT: WELL, ALL OF THIS DOES HIGHLIGHT HOW IMPORTANT IT IS THAT WE MOVE EXPEDITIOUSLY, DEFINITIVELY, AND THAT THE PARTIES, IF THEY HAVE RIGHTS THEY WANT TO ASSERT, ASSERT THEM IN A WAY THAT WILL MOVE THE MATTER ALONG.

IT ALSO POINTS OUT, PERHAPS, HOW IMPORTANT IT IS IF THESE PARTIES STILL HAVE THE INCENTIVE TO RESOLVE THIS MATTER TO CONTINUE TO WORK TO RESOLVE IT.

I AM GOING TO OPERATE UNDER THE ASSUMPTION THAT THEY HAVE ALREADY COME TO THE AGREEMENT THAT THEY WISH TO ENFORCE, BUT I WILL HAVE MY EYES AND EARS OPEN FOR ANY FURTHER SUBMISSIONS FROM YOU ALL THAT TELL ME TO GO INTO A DIFFERENT DIRECTION BECAUSE YOU AGREE THAT IT WILL RESOLVE ALL OF THE VARIOUS DISPUTES THAT HAVE COME UP SINCE THE SIGNING OF THE AGREEMENT.

DID YOU STAND TO SPEAK TO THE COURT?

MR. HAWK: MY NAME IS ROBERT HAWK, AND I'M WITH THE HELLER EHRMAN LAW FIRM AND WE REPRESENT EDUARDO SAVERIN, WHO IS NOT A PARTY TO

THIS LITIGATION BEFORE YOUR HONOR BUT IS A PARTY TO THE DISTRICT COURT LITIGATION IN THE DISTRICT OF MASSACHUSETTS.

THE COURT: IS HE A PLAINTIFF OR A DEFENDANT?

MR. HAWK: HE'S A DEFENDANT. AND, YOUR HONOR, THE REASON I ASK YOUR INDULGENCE TO HEAR ME EVEN THOUGH WE'RE NOT A PARTY TO THIS CASE IS THAT IN SOME OF THE -- IN AT LEAST ONE FORM OF THE PROPOSED JUDGMENT THAT WAS TENDERED TO YOUR HONOR, WE HAVEN'T BEEN SERVED WITH THOSE AND I SHOULD SAY UP-FRONT THAT WE DON'T MEAN TO WAIVE ANY PERSONAL JURISDICTIONAL ARGUMENTS BY MY POSITION BY MY ADDRESSING THE COURT THIS MORNING, YOUR HONOR.

BUT WE HAVE RECEIVED COURTESY COPIES OF CERTAIN OF THE PLEADINGS BEFORE YOUR HONOR AND AT LEAST ONE OF THOSE PROPOSED JUDGMENTS WOULD INDICATE THAT IT WOULD BIND NOT ONLY THE PARTIES TO THIS LITIGATION BUT IT WOULD BIND THE PARTIES TO THE DISTRICT COURT LITIGATION IN MASSACHUSETTS.

AND SO THAT'S A -- THAT'S THE REASON THAT I WANT TO ADDRESS YOUR HONOR.

THE COURT: HERE'S -- LET ME TELL YOU MY UNDERSTANDING. MY UNDERSTANDING IS THAT THE PARTIES TO THE AGREEMENT AGREED THAT CASES WOULD BE

DISMISSED.

I HAVE NOT -- I RAISED THIS QUESTION WITH MY LAW CLERK, BUT I HAVE NOT AT THIS POINT MADE A JUDGMENT WITH RESPECT TO THE EFFECT OF THAT, OF THAT ON ANY NONPARTY TO THE AGREEMENT WHO ARE PARTIES TO THE OTHER LITIGATIONS.

IF THE CASE IS DISMISSED AS OPPOSED TO THEIR CLAIMS OR WHATEVER, IT MAY HAVE AN EFFECT ON MR. SAVERIN OR MS. SAVERIN BECAUSE IT DOES MEAN THAT A NONPARTY TO THE AGREEMENT IS AFFECTED BY SOMETHING THAT THE PARTIES DO WITH RESPECT TO THAT LITIGATION.

BUT WHETHER -- WHAT THAT IS MIGHT BE A MATTER WITHIN THE JURISDICTION OF THE MASSACHUSETTS COURT AND IT MIGHT BE SOMETHING THAT IS BROUGHT TO ME.

WHAT IS IT THAT YOU WOULD WISH ME TO DO TODAY, IF ANYTHING?

MR. HAWK: WELL, FIRST OF ALL, LET ME JUST SAY THAT WHAT YOU JUST EXPRESSED IS CONSISTENT WITH OUR VIEW -- WITH MR. SAVERIN'S VIEW OF THE EFFECT OF THIS AGREEMENT.

MR. SAVERIN WAS NOT A SIGNATORY TO THE AGREEMENT. HE WAS NOT PART OF THE MEDIATION, BUT HE IS A DEFENDANT IN THAT CASE.

THE AGREEMENT ON ITS FACE CALLS FOR A DISMISSAL, A FINAL DISMISSAL OF THAT CASE IN MASSACHUSETTS.

SO HE WOULD BE AFFECTED BY THAT.

AND THAT'S ALL GOOD. HE'S A DEFENDANT IN THAT CASE. AND, AND SO --

THE COURT: NO COUNTERCLAIMS BEING ASSERTED.

MR. HAWK: NO COUNTERCLAIMS BY MR. SAVERIN.

MR. CHATTERJEE: YOUR HONOR, AT THAT -- AT THE POINT THE CASE WAS DISMISSED IN MASSACHUSETTS, IT WAS NOT YET AN ISSUE. THERE ARE MOTIONS TO DISMISS PENDING. SO THERE HAD NOT YET BEEN COUNTERCLAIMS ASSERTED BY ANY OF THE DEFENDANTS.

THE COURT: SO THAT CASE HAS BEEN DISMISSED?

MR. CHATTERJEE: IT HAS NOT. THERE WERE MOTIONS TO DISMISS PENDING, YOUR HONOR.

THE COURT: OR WHERE THE MOTIONS WERE MADE. I SEE.

MR. CHATTERJEE: CORRECT.

THE COURT: AND SO THE COURT THERE HAS STAYED THE LITIGATION?

MR. CHATTERJEE: YES, YOUR HONOR. JUST TO GIVE YOU AN IDEA OF THE STATUS, IN OCTOBER OF LAST YEAR THERE WERE SEVERAL MOTIONS TO DISMISS THAT WERE HEARD AND THAT WERE PENDING UPON NOTIFICATION OF SETTLEMENT.

THE COURT ADMINISTRATIVELY TERMINATED THEM. THERE WAS SOME, SOME FOLLOW-ON LITIGATION ASSOCIATED WITH THESE PROCEEDINGS WHERE THE COURT ISSUED A WRITTEN ORDER ABOUT WHY THEY DID WHAT THEY DID AND WE FILED THE NOTICE WITH THE BOSTON COURT ABOUT YOUR HONOR'S ORDER.

THE COURT: WHO IS YOUR JUDGE THERE?

MR. CHATTERJEE: IT'S JUDGE WOODLOCK AND I BELIEVE, YOUR HONOR, HE SENT YOU BOTH A TRANSCRIPT --

THE COURT: I REMEMBER THAT NOW.

MR. CHATTERJEE: AND, YOUR HONOR, THE DISMISSAL, ACTUALLY TO MR. BARRETT'S POINT, I THINK THE DISMISSALS REALLY GO MUCH MORE TO THE BOSTON PROCEEDINGS THAN THE CALIFORNIA PROCEEDINGS BECAUSE WE HAD TO SEEK TO ENFORCE THE DISMISSAL HERE.

THERE IT WOULD JUST BE FILING THE STANDARD DOCUMENTATION.

MR. HAWK: SO, YOUR HONOR, TO GET BACK TO YOUR QUESTION ON WHY I'M STANDING UP HERE

ADDRESSING THE COURT, WE ARE, WE ARE -- MR. SAVERIN IS FINE WITH THE DISMISSAL OF THE LAWSUIT AS A RESULT OF THIS AGREEMENT AND IN MASSACHUSETTS.

HE ALSO TO THAT EXTENT IS A FULL SUPPORTER, EVEN THOUGH HE'S NOT PART OF AND A SIGNATORY TO THE SETTLEMENT AGREEMENT, A SUPPORTER OF THAT AGREEMENT AND IN AGREEMENT WITH YOUR HONOR'S RULING AND ENFORCING THE SETTLEMENT AGREEMENT.

AND HE REALLY IS, AS FAR AS A RELEASE, IF THERE'S SOME DECISION THAT HE NEEDS OR SHOULD SIGN A RELEASE OR THERE'S A DESIRE THAT HE SIGN A RELEASE OF THE CONNECTU PARTIES, THAT'S ALL -- I'M CONFIDENT THAT THAT COULD BE WORKED OUT.

THE ONLY ISSUE THAT I WANTED TO RAISE IN FRONT OF YOUR HONOR ARISES FROM A CONFIDENTIALITY PROVISION IN THE HANDWRITTEN SETTLEMENT AGREEMENT.

THE PROPOSED FORM OF ORDER THAT WAS SUBMITTED TO YOUR HONOR, ONE OF THEM SAID THAT IT WOULD, IT WOULD COMPEL OR REQUIRE ALL PARTIES, INCLUDING THE PARTIES TO THE MASSACHUSETTS LITIGATION, TO RESPECT AND TO ABIDE BY THIS CONFIDENTIALITY PROVISION.

THAT SAID, MY CLIENT IS, AND HAS ONLY WISHES TO BE HEARD TO STATE HIS UNDERSTANDING OF

THAT CONFIDENTIALITY PROVISION BECAUSE ALTHOUGH IT'S A NARROW CONCERN OF HIS, IT IS AN IMPORTANT CONCERN.

MY CLIENT, MR. SAVERIN, IS IN LITIGATION WITH FACEBOOK. AND ANYWAY, WITH REGARD TO THE CONFIDENTIALITY PROVISION, WHAT HE UNDERSTANDS THAT PROVISION TO SAY, AND TO MEAN, IS THAT THERE WILL NOT BE PUBLIC COMMENT OR DISCLOSURE ABOUT THE SPECIFIC CLAIMS IN THE CONNECTU VERSUS FACEBOOK, VERSUS SAVERIN, VERSUS ZUCKERBERG LITIGATION; NOT THAT THIS IS A CONFIDENTIALITY PROVISION THAT WOULD PROHIBIT ANY KIND OF PUBLIC COMMENT GOING FORWARD ON THE MORE GENERAL MATTERS ON THE FOUNDING OF FACEBOOK, THE RELATIONSHIPS BETWEEN THE FOUNDERS AND MATTERS OF A MORE GENERAL NATURE.

AND THAT IS THE ONLY ISSUE THAT I WANTED TO RAISE HERE TODAY.

THE COURT: WELL, I WON'T RULE ON THAT BECAUSE IT'S NOT BEFORE ME, BUT THAT IS THE KIND OF THING THAT, PERHAPS, IF YOU WOULD COMMUNICATE, IF YOU HAVEN'T, TO THE VARIOUS PARTIES TO THE AGREEMENT AND OTHERS TO SEEK THEIR RESPONSE, THAT WOULD INFORM YOUR CLIENT AS TO WHAT THEIR RESPONSE IS.

BUT IT DOESN'T APPEAR THAT IT'S THE KIND

OF THING THAT I WOULD USE IN THE JUDGMENT OR MENTION IN THE JUDGMENT AT THIS POINT.

IT COULD BE THE SUBJECT OF POST-JUDGMENT PROCEEDINGS IN THE ENFORCEMENT IF IT BECOMES A PROBLEM FOR ENFORCEMENT, BUT OTHERWISE I WOULD ADVISE YOU TO MAKE KNOWN THOSE CONCERNS AND SEE WHAT RESPONSE YOU GET AND COME TO A PROPER COURT, EITHER HERE OR MASSACHUSETTS, IF YOU'RE NOT SATISFIED.

MR. HAWK: THANK YOU, YOUR HONOR. THAT WAS REALLY THE MAIN INTENT OF MY STANDING UP AND SAYING THIS IN FRONT OF THE PARTIES AND THE COURT THIS MORNING.

MR. CHATTERJEE: YOUR HONOR, JUST ONE FINAL THING.

FOR YOUR HONOR'S JUDGMENT, I THINK IT IS VERY IMPORTANT, GIVEN THE NOTICE OF LIEN THAT HAS BEEN FILED, MR. MOSKO'S REPRESENTATION THAT THEY HAVE PERFECTED A LIEN THAT THE PROCEEDS THAT FACEBOOK GIVES TO THE SPECIAL MASTER SHOULD NOT BE DISBURSED WITHOUT THE CONSENT OF THE LIEN HOLDERS.

AND I'M VERY FOCUSSED ON THIS ISSUE OF POTENTIAL EXPOSURE FOR FACEBOOK WHEN IT PERFORMS AS IT SAID IT WOULD IN THE AGREEMENT, WHEN IT AT LEAST HAS SOME KIND OF NOTICE, PERHAPS NOT SUFFICIENT

NOTICE, BUT SOME KIND OF NOTICE OF POTENTIAL LIENS HANGING OUT THERE.

THE COURT: ARE YOU NOT SATISFIED IF I SAY NO DISBURSEMENTS WITHOUT FURTHER ORDER OF THE COURT?

MR. CHATTERJEE: "WITHOUT FURTHER ORDER OF THE COURT"? YOUR HONOR, I DON'T THINK THAT DOES THAT BECAUSE I THINK THEY NEED TO BE HERE AND MAKE SURE THEY GET SERVED WITH NOTICE OF THE COURT'S PROCEEDINGS.

THE COURT: WHAT I INTEND TO DO IS TO FIGURE OUT THIS LIEN. I HAVEN'T SEEN IT. SOMEONE SHOWED ME SOMETHING THAT WAS -- LET ME SEE IF I COULD FIND WHAT I WAS LOOKING AT.

MR. CHATTERJEE: IT WAS LIKE A TWO-PAGE DOCUMENT, YOUR HONOR.

THE COURT: YES. IT IS A NOTICE OF ATTORNEY'S LIEN FILED ON THE CASE NUMBER THAT IT WAS WHEN IT WAS PENDING BEFORE JUDGE SEEBORG. IT INCLUDED LIEN OVER CLAIMS, CAUSES OF ACTION, JUDGMENT, SETTLEMENT OR OTHER RECOVERY PAID TO CONNECTU PARTIES, WHOEVER THAT IS, BUT THAT IS AN IDENTIFIED TERM, OR ANY OF THEM OR THEIR SUCCESSORS OR ASSIGNEES IN CONNECTION WITH THIS ACTION, WHICH I PRESUME TO BE THE CALIFORNIA ACTION, FOR THE

PURPOSE OF SECURING PAYMENT OF ATTORNEYS' FEES, COSTS, EXPENSES ON ACCOUNT OF ITS REPRESENTATION OF THE CONNECTU PARTIES.

MR. CHATTERJEE: YOUR HONOR, THERE WAS A VIRTUALLY IDENTICAL ONE ALSO FILED IN BOSTON.

THE COURT: ALL RIGHT. THEN THAT WOULD TAKE CARE OF THAT.

AND SO, PERHAPS, WHAT SHOULD HAPPEN IS THE PARTIES SHOULD TENDER TO ME WHATEVER YOU WANT IN TERMS OF A POST-JUDGMENT ORDER THAT WOULD SAY WHAT SHOULD HAPPEN WITH RESPECT TO THAT DISBURSEMENT THAT RESPECTS THIS.

BUT I AM CONCERNED THAT IF I PUT THIS IN THE JUDGMENT, I AM DOING SOMETHING THAT THE PARTIES DIDN'T AGREE TO IN THEIR SETTLEMENT AGREEMENT.

I'M TRYING TO STICK, FOR PURPOSES OF ANYONE QUESTIONING MY ROLE HERE IN ENFORCING THE SETTLEMENT AGREEMENT AND GIVING A JUDGMENT, THAT IF I START ADDING THINGS THAT ARE OUTSIDE THE CONFINES OF THAT SETTLEMENT AGREEMENT, I'M NOW DOING SOMETHING BEYOND ENFORCEMENT.

AFTER I GIVE THAT JUDGMENT, I CAN DO THINGS THAT WILL RESPECT THE VARIOUS ECONOMIC INTERESTS OF THE PARTIES TO CARRY THAT OUT, BUT I WAS CONCERNED ABOUT PUTTING IT IN THE JUDGMENT.

IF YOU ALL STIPULATE THAT I CAN PUT IT IN THE JUDGMENT SO AS TO NOW NOT MAKE THAT A SOURCE OF APPEAL, THEN I WILL CONSIDER THAT STIPULATION.

I MAY REJECT IT, BUT I WILL CONSIDER IT SO THAT'S ONE THING THAT YOU CAN DO THAT WOULD AFFECT IT.

BUT I GIVE YOU MY ASSURANCE THAT THIS ISSUE OF THE LIEN OR LIENS, AS THE CASE MAY BE, WILL BE ADDRESSED BY THE COURT BEFORE THERE'S ANY DISBURSEMENT AND BY THE, BY THE -- MAYBE I CAN PUT IN THE JUDGMENT NO DISBURSEMENT WITHOUT FURTHER ORDER OF THE COURT WHICH SHALL ADDRESS ALL LIENS AND MAKE SURE THAT EVERYTHING IS RESOLVED.

BUT I THINK THAT THAT IS ADDING LANGUAGE THAT IS TOTALLY, TOTALLY UNNECESSARY.

ONCE I HAVE THE MATTER HERE YOU WOULD BE ABLE TO COME HERE, AS WELL AS THE LIEN CLAIMANT, AND ARGUE ABOUT THAT, BUT I'LL TAKE THAT INTO CONSIDERATION IN MY LANGUAGE.

MR. VAN DALSEM: MAY I POSE A QUESTION?

THE COURT: CERTAINLY.

MR. VAN DALSEM: WITH RESPECT TO THE CASH THAT THE SPECIAL MASTER WOULD BE HOLDING ONTO, IS THE JUDGMENT GOING TO ADDRESS THE NAME OF THE DEPOSITOR?

THE COURT: NO. I WOULD LEAVE THAT TO THE MASTER. I DON'T KNOW ENOUGH ABOUT WHAT WOULD HAVE TO HAPPEN IN THAT LEVEL OF DETAIL THAT I WOULD PUT IT IN THE JUDGMENT.

MR. VAN DALSEM: VERY WELL. BECAUSE IF YOU WERE, I WOULD REQUEST THAT OUR FIRM BE LISTED AS ONE OF THE CO-DEPOSITORS IN ORDER TO PROTECT THAT INTEREST.

BUT IF YOU'RE NOT GOING TO PUT THAT IN.

THE COURT: WELL, THAT'S FURTHER TO WHAT I HAVE JUST SAID.

IN OTHER WORDS, YOU'RE NOT A PARTY TO THE SETTLEMENT AGREEMENT, AND I'M NOT GOING TO REQUIRE AS A PART OF THIS JUDGMENT THAT YOU DEPOSIT ANYTHING BECAUSE YOU HAVEN'T AGREED TO DEPOSIT ANYTHING AS FAR AS THE SETTLEMENT.

YOU'RE IMPOSING YOURSELF LEGALLY ON A JUDGMENT AND JUST AS I WOULD ENTER A JUDGMENT AFTER A TRIAL THAT WOULDN'T SPEAK TO THAT, MY JUDGMENT WOULD BE ENTERED AND YOU WOULD IMPOSE YOUR LIEN ON THAT JUDGMENT SO THAT IN THE EXECUTION OF THE JUDGMENT, THOSE FOLLOW-ON PROCEEDINGS, THAT LIEN WOULD BE RECOGNIZED IN SOME WAY.

AND SO IT SEEMS TO ME THAT THE RULES TAKE CARE OF THAT AND I DON'T NEED TO INCLUDE IT IN THE

JUDGMENT.

MR. BARRETT: YOUR HONOR, I WOULD ASSUME THAT THE ACCOUNT, IF YOU WILL, THE DEPOSIT ACCOUNT, OR THE TREASURY BILLS, OR WHATEVER THE INVESTMENT IS, WOULD BE IN THE NAME OF THE TRUSTEE OR SPECIAL MASTER AND PERHAPS THAT'S THE SAME WAY TO HANDLE THE STOCK CERTIFICATES, TOO, JUST MAKE THEM PAYABLE TO THAT PERSON AND HE OR SHE TRANSFERS THEM ON.

THE COURT: WELL, THE CERTIFICATES, IF IT'S NECESSARY TO PUT THEM IN A NAME AND YOU CAN'T COME TO SOME INSTRUCTION TO ME AS TO WHAT NAMES THEY SHOULD BE IN BECAUSE OF THIS PROBLEM, I'M GOING TO ACTUALLY HAVE SUBSEQUENT PROCEEDINGS TO ACTUALLY ASK THAT.

I SHOULD TELL YOU I HAVE AN ANNUAL LEAVE AND I'M GOING TO BE OUT OF THE DISTRICT FOR ABOUT 30 DAYS SO THERE COULD BE -- IF YOU ALL ARE THINKING THAT THINGS WOULD HAPPEN QUICKLY AS YOU ARE USING THE WORD, AND IT COMES WITHIN THAT PERIOD OF TIME, THERE WILL BE A LOGISTICAL PROBLEM, BUT I'LL GIVE SUFFICIENT INSTRUCTIONS TO THE MASTER TO GET EVERYTHING MOVING AND TO MOVE IT AS QUICKLY AS I CAN, SOME OF THIS BEING SUBJECT TO THIS QUESTION OF WHETHER OR NOT THERE WILL BE APPEALS AND STAYS AND THAT SORT OF THING.

MR. BARRETT: UH-HUH.

THE COURT: DO I NEED TO HEAR ANYTHING MORE?

MR. VAN DALSEM: YOUR HONOR, A PRACTICAL SUGGESTION, PERHAPS.

ASSUMING YOUR HONOR ISSUED A JUDGMENT TODAY, THEORETICALLY IT COULD BE APPEALED TOMORROW AND THEN I BELIEVE THIS COURT WOULD BE WITHOUT JURISDICTION.

I SIMPLY RAISE THE PRACTICAL ISSUE THAT THE ISSUE OF THE JUDGMENT SHALL BE HELD IN ABEYANCE UNTIL SUCH TIME AS EVERYTHING IS SET OR AT LEAST --

THE COURT: WELL, I HAVEN'T THOUGHT THROUGH THAT. IT SEEMS TO ME THAT THAT INVITES FURTHER DELAY. I'M NOT WILLING TO ACCEPT THAT MY LOSS OF JURISDICTION OVER THE ISSUE OF WHETHER THE JUDGMENT SHOULD BE ENTERED DEPRIVES ME OF JURISDICTION TO DO CERTAIN THINGS UNDER THE JUDGMENT.

THERE ARE A LOT OF THINGS THAT COURTS DO WHILE THE MERITS ARE APPEALED. AND IT SEEMS TO ME THAT IF AN APPEAL WERE TAKEN, THE SUGGESTION THAT MAYBE A SUPERSEDING BOND WOULD BE POSTED WITH ONE AND A HALF TIMES THE AMOUNT OF THE OTHERWISE JUDGMENT, WHICH IS DIFFICULT TO VALUE GIVEN THE

FACT THAT THIS IS A COMBINATION OF CASH AND OTHER CONSIDERATION, WOULD BE SOMETHING THAT I FACE IN THE FUTURE.

SO THANK YOU FOR THE SUGGESTION, BUT I MIGHT NOT TAKE IT.

MR. BARRETT: AND, YOUR HONOR, AS I INDICATED EARLIER WITH RESPECT TO A BOND, I BELIEVE THAT THE, THAT THE RULE 62, AS IT --

THE COURT: I JUST MENTIONED IT BECAUSE IT GOT MENTIONED. I HAVEN'T COME TO THAT.

MR. BARRETT: I THINK THERE WOULD BE OTHER WAYS TO DEAL WITH THAT BESIDES A BOND.

THE COURT: ANYTHING FURTHER?

MR. CHATTERJEE: THANK YOU FOR YOUR TIME, JUDGE.

MR. BARRETT: AND, YOUR HONOR, WITH RESPECT TO THE SPECIAL MASTER, IS THAT -- WOULD IT BE APPROPRIATE AT SOME POINT IF THE COURT HASN'T DECIDED WHO THAT MIGHT BE TO GIVE THE PARTIES SOME NOTICE BEFORE THAT, BEFORE THAT --

THE COURT: WELL, MY NORMAL PRACTICE IS TO DO AN ORDER SETTING UP THE POWERS AND THEN TO NOMINATE SOMEONE TO SERVE IN THAT CAPACITY TO ALLOW THE PARTIES TO MAKE ANY OBJECTIONS TO THE INDIVIDUAL BEFORE THAT PERSON THEN SIGNS THE FORMS

THAT ARE NECESSARY TO TAKE ON THE RESPONSIBILITY AS A MASTER.

I, I -- AND THAT'S THE PRACTICE THAT I INTEND TO FOLLOW.

MR. BARRETT: THANK YOU.

MR. CHATTERJEE: THANK YOU, YOUR HONOR.

MR. VAN DALSEM: THANK YOU VERY MUCH, YOUR HONOR.

(WHEREUPON, THE EVENING RECESS WAS TAKEN.)